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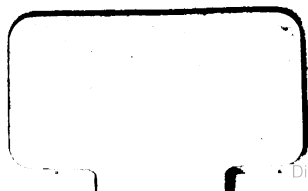
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Atchison, Topeka and Santa Fe  
Railway company, Eastern railwa  
company of New Mexico to Morton  
Trust co.

Mortgage

1908

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**THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,**

*Of the first part,*

**THE EASTERN RAILWAY COMPANY  
OF NEW MEXICO,**

**TO**

*Of the second part,*

**MORTON TRUST COMPANY, Trustee,**

*Of the third part.*

## **Mortgage**

**Securing**

**TRANSCONTINENTAL SHORT LINE FIRST MORTGAGE  
FOUR PER CENT. FIFTY-YEAR GOLD BONDS.**

**Issue, \$30,000,000.**

**Interest Payable January 1st and July 1st.**

**Dated July 1, 1908.**

MARK DE P



**AN INDENTURE**, made in the City of New York this 1st day of July, A. D. 1908, between

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (hereinafter called the "Atchison Company"), a corporation organized and existing under the laws of the State of Kansas, party of the first part;

THE EASTERN RAILWAY COMPANY OF NEW MEXICO (hereinafter called the "Eastern Company"), a corporation organized and existing under the laws of the Territory of New Mexico, party of the second part; and

MORTON TRUST COMPANY (hereinafter called the "Trustee"), a corporation organized and existing under the laws of the State of New York, party of the third part.

WHEREAS, the Eastern Company has constructed and owns a line of railroad extending from a point on the eastern bank of the Rio Puerco River, in the Territory of New Mexico, at or near Rio Puerco, in Valencia County, thence in an easterly direction through Belen to the eastern boundary line of said Territory of New Mexico at or near Texico in Roosevelt County, in said Territory, a distance of about 268.33 miles; a certain branch line about 8.97 miles in length extending in a Southerly direction from a point on said last-described line near Clovis in Roosevelt County to a point of connection at or near Cameo with the railroad formerly belonging to The Pecos Valley and Northeastern Railway Company and now owned by the Eastern Company; and a certain other branch line about 3.56 miles in length extending from a point known as Dalies, located 7.12 miles Easterly from the East bank of the Rio Puerco river, to a point of connection with the railroad of

The Atchison, Topeka and Santa Fe Railway Company at Sandia in Valencia County, New Mexico ; and

WHEREAS, the Eastern Company has acquired and owns the railroad formerly belonging to The Pecos Valley and Northeastern Railway Company, commencing at a point in the County of Eddy, in the Territory of New Mexico, at or near the place where the Pecos River crosses the southern boundary line of said Territory into the State of Texas, and extending thence in a northerly direction through the counties of Eddy, and Chaves to the town of Roswell in Chaves County, and thence in a northeasterly direction through the counties of Chaves and Roosevelt to a point of connection with said branch from Clovis described in the first recital hereof, a distance of about 208.19 miles, more or less, together with the other property and franchises formerly of said The Pecos Valley and Northeastern Railway Company ; and

WHEREAS, the Eastern Company has acquired and owns all except ten shares of the capital stock of The Pecos and Northern Texas Railway Company, a corporation of the State of Texas, and \$1,140,000, par value, of the First Mortgage Six Per Cent. Gold Bonds of said Company (being all the bonds of said Company outstanding), and said The Pecos and Northern Texas Railway Company owns and operates a line of railway extending from a point of connection with the railroad of the Eastern Company at the boundary line between the State of Texas and the Territory of New Mexico, at or near Texico, in a generally northeasterly direction through the counties of Parmer, Castro, Deaf Smith and Randall, to a point of connection with the line of railway of the Southern Kansas Railway Company of Texas at Amarillo, in Potter County in the State of Texas, a distance of about 94.5 miles, and a branch extending from a point at or near Canyon City in Randall County, in a southerly direction through Randall and Swisher Counties to a point at or

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near Plainview, in Hale County, all in said State, a distance of about 57.5 miles ; and

WHEREAS, the Eastern Company has acquired and owns all except twelve shares of the capital stock of The Pecos River Railroad Company, a corporation of the State of Texas, and \$696,000, par value, of the First Mortgage Five Per Cent. Gold Bonds of said Company (being all the bonds of said Company outstanding), and said The Pecos River Railroad Company owns and operates a line of railway commencing at a point of connection with said line of railroad formerly owned by The Pecos Valley and Northeastern Railway Company and now owned by the Eastern Company, at the boundary line between the State of Texas and the Territory of New Mexico, and extending thence in a southeasterly direction to a point at Pecos City in the County of Reeves in the State of Texas, a distance of about 54.27 miles ; and

WHEREAS, the railway of the Eastern Company from Rio Puerco to Texico was constructed by means of advances made by the Atchison Company in order to furnish a low-grade short line for trans-continental traffic of the Atchison System, and the construction of an extension of the railway of the Pecos and Northern Texas Railway Company to a point of connection with the railway of the Gulf, Colorado and Santa Fe Railway Company is contemplated in part for the purpose of establishing a low-grade short line, in conjunction with the railways of the Eastern Company and of the Atchison Company, for traffic between points on or near the Gulf of Mexico and the Pacific Coast ; and

WHEREAS, heretofore the Atchison Company, for value acquired and owned the First Mortgage and Collateral Fifty-year Four Per Cent. Gold Bond of the Eastern Company for the principal sum of seventeen million dollars (\$17,000,000), being



the only bond issued under and secured by a mortgage or deed of trust dated July 1, 1907, executed by the Eastern Company to the Morton Trust Company, a corporation of the State of New York, as trustee; and thereafter the Atchison Company surrendered to the Eastern Company said bond for the principal sum of seventeen million dollars (\$17,000,000), together with all claims for interest on said bond, and consented to the release and cancellation thereafter of the mortgage or deed of trust securing the same, in consideration of an agreement of the Eastern Company to assume the payment of the principal and interest of seventeen million dollars (\$17,000,000) par value of the Four Per Cent. Fifty-year Gold Bonds hereinafter described of the Atchison Company and to execute this indenture of mortgage or deed of trust securing the payment of the principal and interest of such bonds, and charging with such payment all and singular the lines of railway and other property of the Eastern Company hereinafter mentioned; and

WHEREAS, the Eastern Company has agreed further that in settlement and discharge of advances hereafter to be made by the Atchison Company to the Eastern Company to enable it to make expenditures for any of the purposes specified in section 3 of Article One of this indenture, there may be and shall be certified by the Trustee under this indenture and be redelivered to the Atchison Company or upon its order additional bonds of the Atchison Company secured by this indenture, of a par value equal to such advances, and that the principal and interest of such additional bonds as and when such principal and interest shall become due shall be paid and discharged by the Eastern Company, but without any release of the obligation of the Atchison Company to the holders of any bonds issued hereunder, this undertaking of the Eastern Company being intended to be and being for the benefit of the holders of all such bonds as well as for the benefit of the Atchison Company; and

WHEREAS, The aggregate principal sum of all bonds certified under this indenture and outstanding never shall exceed thirty million dollars (\$30,000,000), and never shall exceed twenty-five thousand dollars (\$25,000) per mile of main track railway (not including second or additional tracks, passing tracks and side tracks) then owned by the Eastern Company, or by the Pecos River Railroad Company, or the Pecos and Northern Texas Railway Company, or by some other railway company, of which all of the outstanding bonds and at least two-thirds of the outstanding capital stock shall have been delivered to, and deposited with the Trustee hereunder; and

WHEREAS, said seventeen million dollars (\$17,000,000) par value of bonds to be certified and redelivered by the Trustee forthwith upon the execution hereof and any additional bonds that thereafter may be certified and delivered hereunder shall all be ratably secured hereby without any preference, priority or distinction as to lien or otherwise, and without any impairment of the obligation of the Atchison Company thereunder to the holders thereof; and

WHEREAS, in consideration of these presents and of the issue of bonds hereunder, and of the obligation of the Eastern Company duly to pay the same, said First Mortgage and Collateral Fifty-year Four Per Cent. Gold Bond of the Eastern Company for seventeen million dollars (\$17,000,000) has been surrendered by the Atchison Company and cancelled and the Morton Trust Company, as trustee under said mortgage or deed of trust dated July 1, 1907, executed by the Eastern Company to secure its said bond, has duly released and discharged the said mortgage or deed of trust; and

WHEREAS, all such bonds of the Atchison Company to be secured hereby are to bear interest at the rate of four per cent. per annum, payable semi-annually, and such bonds are to be coupon bonds, each for the principal

sum of One Thousand Dollars, and registered bonds without coupons, each for the principal sum of One Thousand Dollars or of some multiple of One Thousand Dollars that shall be prescribed by the Atchison Company, every such bond to bear a distinctive number or designation ; and all such bonds, from time to time are to be executed in the name and on behalf of the Atchison Company, under its corporate seal, by its Comptroller or a Deputy Comptroller and by its Secretary or an Assistant Secretary, and are to be substantially of the following tenor, to wit :

[FORM OF COUPON BOND.]

No.-----

\$1,000

UNITED STATES OF AMERICA.

**THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY.**

**TRANSCONTINENTAL SHORT LINE FIRST MORTGAGE FOUR PER  
CENT. 50 YEAR GOLD BOND.**

The Atchison, Topeka and Santa Fe Railway Company (hereinafter called the Atchison Company), a corporation of the State of Kansas, for value received, promises to pay on the first day of July, A. D. 1958, at the agency of the Atchison Company in the City of New York, to bearer, or, if this bond be registered, then to the registered holder hereof, One Thousand Dollars, gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon from the first day of July, A. D. 1908, at the rate of four per cent. per annum, such interest to be payable at such agency, in like gold coin, semi-annually on the first day of January and the first day of July in each year, but only upon presentation and surrender of the annexed coupons therefor as

they severally mature. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Atchison Company or the Trustee may be required to pay or to retain therefrom under any present or future law of the United States or of any state, territory, county or municipality therein.

This bond is one of a duly authorized issue of coupon bonds and registered bonds of the Atchison Company, issued and to be issued under and pursuant to, and all equally secured by, an indenture of mortgage or deed of trust dated July 1st, 1908, duly executed by the Atchison Company, of the first part, The Eastern Railway Company of New Mexico (hereinafter called the Eastern Company), of the second part, and Morton Trust Company, a corporation of the State of New York, of the third part, whereby said Eastern Company has mortgaged and conveyed or assigned its railways and other properties and franchises to said Trust Company, as Trustee, as provided in said indenture, to which reference is hereby made for a description of the properties and franchises mortgaged and conveyed or assigned to said Trustee, and the nature of the security and the rights of the holders of said bonds under the same and the terms and conditions upon which said bonds are issued and secured.

As provided in said indenture, the authorized issue of said bonds is limited to \$30,000,000 in the aggregate, and is further limited to \$25,000 per mile of main track railway (not including second or additional tracks, passing tracks and side tracks) that shall be owned by the Eastern Company and subject to said indenture, or by some other company, whereof all the mortgage bonds and two-thirds of the capital stock shall have been deposited with the trustee under said indenture.

In case default shall be made in the payment of any installment of interest on any of said bonds, the principal of all such bonds may be declared to be due and payable immediately in

the manner and with the effect provided in said indenture. This bond is subject to redemption on any interest day upon advertisement of notice, as stated in said indenture, by payment of the principal of the bond, together with a premium of ten per cent. thereof and the interest then accrued.

This bond may be registered as to principal in the owner's name on the books of the Atchison Company at its agency in the City of New York, such registry being noted on the bond by the bond registrar of the Atchison Company, after which no transfer shall be valid unless made on the said books and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereupon transferability by delivery shall be restored. Such registration, however, shall not affect the negotiability of the coupons for the interest hereon, and such coupons shall continue to be payable to bearer and transferable by delivery merely, and payment thereof shall fully discharge the Atchison Company in respect of the interest therein mentioned, whether or not the bond be registered. This bond, with all coupons for future interest thereon, may also, as provided in said indenture, be exchanged for a registered bond without coupons, and any such registered bond without coupons may be exchanged for coupon bonds for the same aggregate principal sum, upon the terms and in the manner provided in said indenture.

This bond shall not be entitled to any security or benefit under said indenture and shall not become obligatory for any purpose until it shall have been authenticated by the execution of the certificate, hereon endorsed, by the Trustee under said indenture.

IN WITNESS WHEREOF, the Atchison Company has caused these presents to be signed by its Comptroller or by a Deputy Comptroller, and its corporate seal to be hereunto affixed

and attested by its Secretary or by an Assistant Secretary, and coupons for said interest, bearing the engraved fac-simile signature of its Treasurer, to be attached hereto this 1st day of July, A. D. 1908.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,  
by

Comptroller.

Attest :

Secretary.

[FORM OF REGISTERED BOND WITHOUT COUPONS.]

No.-----

\$

UNITED STATES OF AMERICA.

**THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY**

**REGISTERED TRANSCONTINENTAL SHORT LINE FIRST MORTGAGE  
FOUR PER CENT. 50 YEAR GOLD BOND.**

The Atchison, Topeka and Santa Fe Railway Company (hereinafter called the Atchison Company), a corporation of the State of Kansas, for value received, promises to pay to or registered assigns, on the first day of July, A. D. 1958, at the agency of the Atchison Company in the City of New York, the sum of dollars, gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon at the rate of four per cent. per annum from the first day of January or July next preceding the date

hereof (unless this bond be dated January first or July first and in that event from the date hereof), such interest being payable to the registered holder hereof at said agency, in like gold coin, semi-annually on the first day of January and the first day of July in each year. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Atchison Company or the Trustee may be required to pay or to retain therefrom under any present or future law of the United States or of any state, territory, county or municipality therein.

This bond is one of a duly authorized issue of coupon bonds and registered bonds of the Atchison Company, issued and to be issued under and pursuant to, and all equally secured by, an indenture of mortgage or deed of trust dated July 1st, 1908, duly executed by the Atchison Company, of the first part, the Eastern Railway Company of New Mexico (herein called the Eastern Company), of the second part, and Morton Trust Company, a corporation of the State of New York, of the third part, whereby said Eastern Company has mortgaged and conveyed or assigned its railways and other properties and franchises to said Trust Company, as Trustee, as provided in said indenture, to which reference is hereby made for a description of the properties and franchises mortgaged and conveyed or assigned to said Trust Company, and the nature of the security and the rights of the holders of said bonds under the same and the terms and conditions upon which said bonds are issued and secured.

As provided in said indenture, the authorized issue of said bonds is limited to \$30,000,000 in the aggregate, and is further limited to \$25,000 per mile of main track railway (not including second or additional tracks, passing tracks and side tracks) that shall be owned by the Eastern Company subject to said indenture, or by some other company, whereof all the mortgage bonds and two-thirds of the capital stock shall have been deposited with the trustee under said indenture.

In case default shall be made in the payment of any installment of interest on any of said bonds, the principal of all such bonds may be declared to be due and payable immediately in the manner and with the effect provided in said indenture. This bond is subject to redemption on any interest day upon advertisement of notice, as stated in said indenture, by payment of the principal of the bond, together with a premium of ten per cent. thereof and the interest then accrued.

This bond is transferable only in the manner prescribed in said indenture, on the books of the Atchison Company at its agency in the City of New York, upon surrender and cancellation of this bond; and upon any such transfer a new registered bond will be issued to the transferee, in exchange therefor, on payment of the charge provided for in said indenture. This bond also, in the manner prescribed in said indenture and upon payment of the charge therein provided for, is exchangeable for coupon bonds for the same aggregate principal sum.

This bond shall not be entitled to any security or benefit under said indenture and shall not become obligatory for any purpose until it shall have been authenticated by the execution of the certificate hereon endorsed by the Trustee under said indenture.

IN WITNESS WHEREOF, the Atchison Company has caused these presents to be signed by its Comptroller or by a Deputy Comptroller, and its corporate seal to be hereunto affixed and attested by its Secretary or by an Assistant Secretary, this

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

Comptroller.

Attest :

Secretary.



AND WHEREAS, there are to be attached to such coupon bonds at the time of the issue thereof coupons representing the semi-annual installments of interest which may become due thereon, each of which coupons is to be substantially of the following tenor, viz. :

[FORM OF COUPON.]

\$20.

\$20.

On the first day of \_\_\_\_\_ The Atchison, Topeka and Santa Fe Railway Company will pay to bearer, at its agency in the City of New York, Twenty Dollars, gold coin, without deduction for taxes, being six months' interest then due on its Transcontinental Short Line First Mortgage Four Per Cent. 50-Year Gold Bond No. \_\_\_\_\_, unless the bond herein mentioned shall have been called for previous redemption.

Treasurer.

AND WHEREAS, each of the coupons to be attached to such coupon bonds is to be authenticated by the engraved fac-simile signature of the present Treasurer or of any future Treasurer of the Atchison Company, and for that purpose the Atchison Company may adopt and use the engraved fac-simile signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when such bonds shall be actually certified and delivered and such coupons shall be attached to the bonds; and

WHEREAS, upon every such registered bond without coupons there is to be endorsed a statement specifying the distinctive numbers of the coupon bonds in lieu of which or in exchange for which such bond was issued, which endorsement is to be substantially of the following tenor, viz. :

## [FORM OF ENDORSEMENT ON REGISTERED BONDS.]

The within bond was issued in lieu of or in exchange for coupon bonds for One thousand dollars each, bearing distinctive numbers \_\_\_\_\_, and is exchangeable, upon the conditions prescribed in the within-mentioned indenture, for coupon bonds bearing the same distinctive numbers. No coupon bond bearing any of said distinctive numbers is outstanding.

AND WHEREAS, on each of said coupon bonds and on each of said registered bonds without coupons there is to be endorsed a certificate of the Trustee that such bond is one of the series of bonds described in this indenture, and no bond shall be secured by this indenture or be entitled to any security or benefit thereunder or be obligatory for any purpose unless such certificate shall have been executed by the Trustee, such certificate to be substantially of the following tenor, viz. :

## [FORM OF TRUSTEE'S CERTIFICATE.]

It is hereby certified that this bond is one of the bonds described in the within-mentioned indenture of mortgage or deed of trust executed to the undersigned.

MORTON TRUST COMPANY,

Trustee,

by

WHEREAS, the execution and issue of said bonds and coupons and the execution and delivery of this indenture have been duly authorized by the Atchison Company ; and

WHEREAS, the execution of this indenture has been duly and unanimously authorized by the holders of all the shares

of the capital stock of the Eastern Company and by vote of its Board of Directors :

NOW, THEREFORE, THIS INDENTURE WITNESSETH : That in order to secure the payment of the principal and interest of all such bonds according to their tenor and effect and the performance of all the covenants and conditions herein contained, and in order to charge with such payment and with such performance the railways, branch lines and other property hereinafter described, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of One Dollar, to it duly paid by the Trustee, the receipt whereof is hereby acknowledged, the Eastern Company has granted, bargained, sold, conveyed, assigned and transferred, and by these presents does grant, bargain, sell, convey, assign and transfer, unto the Trustee, party of the third part, its successors and assigns forever :

All the estate, right, title and interest of the Railway Company now owned or hereafter acquired in or to the following properties, viz. :

1. The line of railway extending from a point on the eastern bank of the Rio Puerco River in the Territory of New Mexico, at or near the station of Rio Puerco, in Valencia County, in said Territory, thence in a southeasterly direction to a junction with the line of railway of The Atchison, Topeka and Santa Fe Railway Company at or near Belen, in said county; thence in a southerly and easterly direction through Valencia and Torrance Counties to a crossing of the line of railway of the Santa Fe Central Railway Company near Willard, in Torrance County; thence in an easterly direction through Torrance and Guadalupe Counties to a point of crossing of the line of railway of the El Paso and Northeastern Railway Company in Guadalupe County; thence in a southerly and easterly direction through

Guadalupe and Roosevelt Counties to the eastern boundary line of the Territory of New Mexico, at or near Texico, in Roosevelt County, in said Territory of New Mexico, a distance of about 268.33 miles ; a certain branch line about 8.97 miles in length extending in a Southerly direction from a point on said last described line near Clovis, in Roosevelt County, to a point of connection at or near Cameo with the railroad formerly belonging to The Pecos Valley and Northeastern Railway Company, and now owned by the Eastern Company ; and a certain branch line about 3.56 miles in length extending from a point known as Dalies, located 7.12 miles Easterly from the East bank of the Rio Puerco River, to a point of connection with the railroad of The Atchison, Topeka and Santa Fe Railway Company at Sandia in Valencia County, New Mexico ; and

2. The line of railway formerly belonging to The Pecos Valley and Northeastern Railway Company, commencing at a point in the County of Eddy, in the Territory of New Mexico, at or near the place where the Pecos River crosses the southern boundary line of said Territory into the State of Texas, and extending thence in a northerly direction through the Counties of Eddy and Chaves to the Town of Roswell, in Chaves County, and thence in a northeasterly direction through the Counties of Chaves and Roosevelt to a point of connection at or near Cameo with said branch line from Clovis, in Roosevelt County, a distance of 208.19 miles, more or less.

3. All other lines of railway, extensions or branches now owned by the Eastern Company.

4. All other lines of railway, extensions or branches, which hereafter may be constructed or acquired by the Eastern Company under its charter, or under any amendment thereof, or under any law now or hereafter in force.

5. One million one hundred and forty thousand dollars (\$1,140,000), par value, of the First Mortgage Six Per Cent. Gold

Bonds of The Pecos and Northern Texas Railway Company, being all the bonds of said Company issued and outstanding, and being issued under and secured by a mortgage or deed of trust dated the tenth day of June, 1907, executed by The Pecos and Northern Texas Railway Company to Morton Trust Company as Trustee, and 1,510 shares of the capital stock of said The Pecos and Northern Texas Railway Company, being all except 10 shares of the capital stock of said Company issued and outstanding. Said bonds of The Pecos and Northern Texas Railway Company for the aggregate principal sum of \$1,140,000 and the certificates for 1,510 shares of the capital stock of said Company have been delivered to the Trustee at the time of the execution of this indenture.

6. Six hundred and ninety-six thousand dollars (\$696,000), par value, of the First Mortgage Five Per Cent. Gold Bonds of The Pecos River Railroad Company, being all the bonds of said Company issued and outstanding, and being issued under and secured by a mortgage or deed of trust dated the first day of July, 1890, executed by The Pecos River Railroad Company to The Mercantile Trust Company, as Trustee, and 6,900 shares of the capital stock of said The Pecos River Railroad Company, being all except 12 shares of the capital stock of said Company. Said bonds of The Pecos River Railroad Company for the aggregate principal sum of \$696,000 and the certificates for 6,900 shares of the capital stock of said Company have been delivered to the Trustee at the time of the execution of this indenture.

7. All lines of railway, extensions, branches and all bonds and shares of capital stock or other property, for or on account of the acquisition of which any of the \$13,000,000 of bonds reserved under section 3 of Article One of this indenture shall be certified and delivered by the Trustee.

8. Including, as part of the railways, extensions and branches hereby mortgaged or conveyed or at any time subject to this indenture, all roadbeds, superstructures, rights of

way, rails, tracks, sidetracks, bridges, viaducts, buildings, depots, stations, warehouses, car houses, engine houses, freight houses, wood houses, machine shops and other shops, turntables, water stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind, now owned or hereafter acquired by the Eastern Company, or its successors, in anywise or at any time belonging or appertaining to, or provided for use upon, or in connection with, any of said lines of railway, terminals and branches, and any and all leaseholds, leases, rights under lease, contracts, covenants and agreements, terms or parts of terms, and any and all other property, real or personal, of every kind and description, now owned or hereafter acquired by the Eastern Company, or its successors, for use upon or in connection with, or for the purpose of, any of such lines of railway, extensions, branches and other properties ;

9. And also any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels of the Eastern Company wheresoever situated, and all which hereafter shall be held or acquired by the Eastern Company, or its successors, for use upon any of said lines of railway, extensions, branches or other properties, now or hereafter subject to the lien of this indenture ;

10. And also any and all corporate or other rights, privileges and franchises which the Eastern Company now has, or which the Eastern Company, or its successors, hereafter shall acquire, possess or become entitled to, for or appertaining to the construction, maintenance, use or operation of such lines of railway, extensions, branches or other properties, or any part thereof ;

11. And also any and all rents, issues, profits, tolls, and other income of such lines of railway, extensions, branches and other properties now or at any time hereafter subject to the lien of this indenture.

12. And also any and all other property of any kind, which at any time hereafter may be expressly conveyed, mortgaged or pledged and delivered, or by writing of any kind assigned or transferred to the Trustee hereunder, by the Eastern Company, or, with its consent, by any one in its behalf, as and for additional security for the bonds issued and to be issued hereunder, the Trustee being hereby authorized at any and all times to receive such conveyance, mortgage, pledge, delivery, assignment or transfer, and to hold and apply any and all such properties subject to the trusts of this indenture ; but any such conveyance, mortgage, pledge, delivery, assignment or transfer pursuant to the provisions of this clause as and for additional security may be made subject to any reservations, limitations, conditions and provisions which shall be set forth in an instrument in writing then executed by the Trustee and by the Eastern Company or the Atchison Company, respecting the use, management and disposition of such additional property and the proceeds thereof.

Together with all the right, title, estate, interest and property which the Eastern Company now has, or at any time hereafter may acquire, in or to any of the franchises, lines of railway, extensions, branches, telegraph lines, stocks, bonds and other property, real, personal or mixed, hereby mortgaged, conveyed and assigned, or intended so to be.

TO HAVE AND TO HOLD the premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks, bonds and other property hereby conveyed or assigned, or intended to be conveyed or assigned, unto the Trustee, its successor or successors and assigns forever.

BUT IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of all present and future holders of such bonds and interest obligations issued and to be issued

by the Atchison Company and certified by the Trustee under this indenture, and for the enforcement of the payment of said bonds and interest obligations when payable and the performance of and compliance with the covenants and conditions of this indenture, without preference, priority or distinction as to lien or otherwise of any one bond over any other bond by reason of priority in the issue or negotiation thereof, so that each and every bond issued and to be issued and certified as aforesaid shall have the same right, lien and privilege under this indenture, and so that the principal and interest of every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby, as if all such bonds at any time outstanding had been made, executed, delivered and negotiated simultaneously with the execution and delivery of this indenture ; and it is hereby covenanted and declared that all such bonds, with the coupons for interest thereon, are to be issued, certified and delivered, and that the premises hereby mortgaged and conveyed are to be held by the Trustee subject to the further covenants, conditions, uses and trusts hereinafter set forth, and it is covenanted between the parties hereto as follows, viz. :

## ARTICLE ONE.

SECTION 1. From time to time such bonds executed by the Atchison Company, shall be delivered to the Trustee for certification, and the Trustee shall certify and shall redeliver the same as provided in this Article, and not otherwise. At the option of the Atchison Company, evidenced by resolution of its board of directors or executive committee, from time to time any of such bonds may be executed, certified and delivered originally either as coupon bonds or as registered bonds. Each coupon bond shall be for the principal sum of One thousand Dollars. Each registered bond without coupons shall be for the principal sum of One thousand dollars



or of any multiple of One thousand dollars that, from time to time, may be fixed by the Atchison Company, evidenced by resolution of its board of directors or executive committee.

The amount of all such coupon bonds and registered bonds that may be certified by the Trustee hereunder is limited so that never at any time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding \$30,000,000.

Each coupon bond shall bear a distinctive number, and the numbers of the coupon bonds shall be from 1 to 30,000, both inclusive. Registered bonds without coupons may be issued in lieu of a like amount of coupon bonds, or, as provided in section 4 of this Article, in exchange for a like amount of coupon bonds or registered bonds without coupons upon surrender and cancellation thereof. On each registered bond without coupons there shall be endorsed a statement substantially of the tenor hereinbefore recited specifying the distinctive number or numbers of the coupon bond or bonds in lieu of which or in exchange for which such registered bond was issued; and whenever, as authorized by section 4 of this Article, coupon bonds or a coupon bond shall be issued in exchange for a surrendered registered bond without coupons, the coupon bond or bonds so issued shall bear the number or respective numbers so endorsed on such surrendered registered bond.

Before certifying or delivering any coupon bond hereby secured, the Trustee shall detach and shall cancel all coupons thereof then matured; and every registered bond shall be dated on the day of the actual certification thereof.

Only such of said bonds as shall bear thereon a certificate substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by and be entitled to the benefits of this indenture or shall be entitled to any benefit hereunder. Every such certificate of the Trustee upon any such bond that shall have been executed by the Atchison Company shall be conclusive and the only evidence that the bond so certified is secured by this indenture, and is entitled to the benefit of the trust hereunder.

SEC. 2. Seventeen million dollars (\$17,000,000), par value, of the bonds to be certified under and secured by this indenture, shall, forthwith upon the execution of this indenture (whether or not this indenture shall have been recorded), and without further action on the part of the Eastern Company, or of the Atchison Company, be certified by the Trustee and be redelivered to the Atchison Company, upon the order of its Comptroller.

SEC. 3. The remaining thirteen million dollars (\$13,000,000), par value, of the bonds to be certified under and secured by this indenture shall be certified and be redelivered from time to time, as hereinafter in this section provided, whenever the Eastern Company shall have incurred an equal amount of indebtedness to the Atchison Company for advances and shall have made or caused to be made expenditures after July 1, 1908, for the following purposes, or any of them, viz. :

(a) The construction, completion or acquisition by the Eastern Company after July 1, 1908, of any line or lines of railway, or any extensions or branches, or part of any line of railway, extension or branch, in addition to the completed lines of railway now subject to this indenture.

(b) The construction, completion or acquisition after July 1, 1908, by said Pecos and Northern Texas Railway Company, or by any other railroad company (all the outstanding mortgage bonds and at least two-thirds of the issued capital stock whereof shall be subject to this indenture), of a line of railroad, or part of a line of railroad, from a point of connection with the railroad of the Eastern Company, or with the railroad of the Pecos and Northern Texas Railway Company, now constructed, to a point of connection with the railroad of the Gulf, Colorado and Santa Fe Railway

Company in the State of Texas, and for the construction, completion or acquisition of branches or extensions of said railroad of said Pecos and Northern Texas Railway Company or of such other railroad company having power to construct such line.

(c) The construction or acquisition after July 1, 1908, of shops, depots, terminal properties, second or additional tracks, passing tracks or side tracks, and other additions to or betterments or improvements of, or rolling stock or other equipment for use upon, any line of railway, extension or branch then subject to the lien of this indenture or that shall belong to any other railroad company, all the outstanding mortgage bonds and at least two-thirds of the issued capital stock whereof shall then be held subject to this indenture; *provided* that not more than five million dollars (\$5,000,000) in the aggregate of said bonds may be certified and delivered under this Section 3 on account of expenditures made for purposes specified in this paragraph (c).

The bonds reserved under this section shall be certified and redelivered by the Trustee from time to time only on the following conditions, viz. :

(1) Before such bonds shall be certified and redelivered, the Eastern Company shall deliver to the Trustee a copy of a resolution or of resolutions of the Board of Directors of the Eastern Company, certified by its secretary or assistant secretary, declaring that the Eastern Company has become indebted to the Atchison Company in a specified sum for moneys advanced; that in settlement and discharge of such indebtedness to the Atchison Company, the Eastern Company has agreed to cause to be certified and redelivered to

the Atchison Company under this section of this indenture additional bonds of the Atchison Company of the issue herein described, for an aggregate principal sum equal to such indebtedness, and has assumed the payment of the principal and interest of such bonds as and when such principal and interest shall fall due; and such resolution or resolutions shall authorize and direct the Trustee to certify and to redeliver to the Atchison Company, or upon its order, from time to time, such bonds to the amount specified in such resolution, not exceeding the amount of the indebtedness so specified. The Trustee shall not certify bonds under this section to an amount in excess of such indebtedness of the Eastern Company to the Atchison Company specified in such resolution or resolutions.

(2) Before such bonds shall be certified and redelivered, the Eastern Company, from time to time, shall deliver to the Trustee a certificate or certificates signed by the President, or a Vice-President or General Manager and also by the Comptroller, or Treasurer or Assistant Treasurer of the Eastern Company, certifying the sum or sums actually expended after July 1, 1908, for the purposes hereinbefore specified, or any of them, in respect of which the certification and redelivery of bonds is applied for hereunder, and the Trustee shall not certify under this section bonds for an aggregate principal sum in excess of the expenditures so certified. Every such certificate shall state briefly the purpose or purposes for which such expenditures were made and shall further state that none of the expenditures stated in such certificate were included in any certificate previously furnished hereunder, and that the Eastern Company has not received under any other article of this indenture moneys on account of the expenditures in respect of which the certification of additional bonds under this section is applied for. Such certificate, further, may show compliance with any other condition upon which the right to certify and deliver bonds hereunder depends and may set forth any other facts for the information of the Trustee.

(3) Before certifying and delivering bonds hereunder on account of expenditures made by the Pecos and Northern Texas Railway Company or by any company other than the Eastern Company for any of the purposes specified in paragraph (b) or paragraph (c) aforesaid, there shall be delivered to and pledged with the Trustee as additional security hereunder bonds of the company by which such expenditures were made for an aggregate principal sum equal to the aggregate principal of the bonds to be certified and delivered under this section in respect of such expenditures, and the bonds so to be delivered to the Trustee shall bear interest at a rate not less than 4 per cent. per annum and shall be secured by a first mortgage on the railway of the company of which the bonds shall be so delivered to the Trustee. The Eastern Company further shall deposit with the Trustee certificates for shares in such company to such an amount (if any) as may be necessary to vest in the Trustee two-thirds of the entire issued capital stock of such company, including any such stock represented by certificates then held by the Trustee. The Trustee shall be under no duty to examine into the validity of such bonds or of the mortgage securing the same, or of such stock, but may accept as conclusive any statement in respect thereto contained in a certificate furnished by the Eastern Company as herein provided in the foregoing clause (2) of this section.

(4) Before the Trustee shall certify and redeliver bonds under this section, the Eastern Company shall deliver to the Trustee a certificate or certificates signed by its President or by one of its Vice-Presidents, and also by its Chief Engineer, stating the aggregate number of miles of completed main track railway then owned by the Eastern Company, free from any lien or charge prior to this indenture, or that shall be owned by the Pecos River Railroad Company, or the Pecos and Northern Texas Railway Company, or by any other railway company whereof all the outstanding bonds and at least two-thirds of

the outstanding capital stock shall have been deposited with the Trustee hereunder. The Trustee shall not certify additional bonds under this section to an amount which would make the aggregate principal of all the bonds certified under this indenture and outstanding exceed twenty-five thousand dollars (\$25,000) per mile of completed main track railway certified as aforesaid to be owned by the Eastern Company and by such other companies, not including second or additional tracks, passing tracks or side tracks.

Such certificates may be received by the Trustee as conclusive evidence of any facts and as establishing any conclusion pertaining to the right to certify and deliver bonds pursuant to the provisions of this section; and the Trustee may receive the certificate of the Secretary or Assistant Secretary of the Eastern Company as conclusive evidence of the adoption of any such resolution of the Board of Directors of the Eastern Company.

The Trustee thereupon shall certify and shall redeliver to the Atchison Company or upon its order, from the bonds mentioned in this section 3, the amount of bonds so authorized and directed not exceeding the amount limited as aforesaid. The Trustee shall be under no duty or responsibility in respect to the issue or negotiation of any bonds so certified and delivered by it, or in respect to the application of their proceeds.

All lines of railway and property of every kind acquired by the Eastern Company in respect whereof bonds shall be certified and delivered pursuant to this section 3 of this Article One, forthwith shall become and shall be subject to the lien of this indenture, without any further conveyance or assignment, as fully and completely as though expressly and specifically conveyed by, and embraced in, the granting clauses of this indenture; but at any and all times the Eastern Company will execute and will deliver any and all such further assurances or conveyances thereof as the Trustee may reason

ably direct or require, for the purpose of expressly and specifically subjecting the same to the lien of this indenture.

SEC. 4. Whenever any coupon bond or bonds, issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered to the Atchison Company for exchange for registered bonds without coupons, the Atchison Company shall execute, and the Trustee shall certify and in exchange for such coupon bond or bonds shall deliver, a registered bond or registered bonds, without coupons, for the like aggregate principal sum. Every registered bond or bonds without coupons so delivered in exchange for a coupon bond or coupon bonds with all unmatured coupons shall bear interest from the semi-annual interest date when the last matured coupon for interest on such surrendered coupon bond or bonds fell due, and shall have endorsed thereon the distinctive serial number or numbers of such surrendered coupon bond or bonds.

Whenever any registered bond without coupons, issued under and secured by this indenture, shall be surrendered to the Atchison Company for exchange for a coupon bond or coupon bonds, the Atchison Company, upon payment of the charges therefor, shall issue, and the Trustee shall certify, and in exchange for such registered bond shall deliver a coupon bond or coupon bonds for the like aggregate principal sums, with the coupons maturing on and after the date when the next semi-annual installment of interest would have been payable on such surrendered bond or bonds; and every coupon bond so issued shall bear a serial number corresponding with or included within the number or numbers endorsed upon the surrendered bond or bonds.

In every case of such exchange the Trustee forthwith shall cancel the surrendered bond or bonds and coupons, and shall deliver the same to the Atchison Company.

Whenever any registered bond or bonds without coupons shall be surrendered to the Atchison Company, transferred and canceled, as provided in section 2 of Article Two of this indenture, the Atchison Company, upon request therefor, shall issue to the transferee, and the Trustee shall certify and shall deliver registered bonds, or one registered bond, without coupons, having endorsed thereon coupon-bond number or numbers corresponding with those endorsed upon the surrendered bond, and for a like aggregate principal sum.

For any exchange of coupon bonds for registered bonds, and for any transfer of registered bonds without coupons, and for any exchange of registered bonds without coupons for coupon bonds, the Atchison Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or governmental charge, and in addition thereto, such further sum as may be necessary to meet other expense connected therewith, such further sum, however, not to exceed one dollar for each new coupon bond or registered bond without coupons issued upon such exchange or transfer.

SEC. 5. In case any coupon bond issued hereunder with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed or lost, the Atchison Company, in its discretion, may execute, and thereupon the Trustee shall certify and deliver, a new bond of like tenor and date (including coupons in case of a coupon bond) bearing or having endorsed thereon the same serial number or numbers, in exchange and substitution for, and upon cancellation of the mutilated coupon bond and its coupons, or the mutilated registered bond, or in lieu of and substitution for the coupon bond and its coupons or the registered bond so destroyed or lost, upon receipt of evidence satisfactory to the Atchison Company, the Eastern Company and the Trustee of the destruction of such coupon bond and its coupons, or of such registered bond, and upon receipt also of



indemnity satisfactory to the Atchison Company, the Eastern Company and the Trustee.

SEC. 6. Until the bonds to be issued under and secured by this indenture can be engraved, the Atchison Company may execute, and upon its request the Trustee shall certify and deliver, pursuant to sections 2 and 3 of this Article, in lieu of such engraved bonds, printed registered bonds of any denomination, substantially of the tenor of the bonds to be issued as hereinbefore provided. Upon surrender of such printed bonds for exchange, the Atchison Company at its own expense and without making any charge therefor, shall issue, and upon cancellation of such surrendered bonds the Trustee shall certify and deliver, in exchange therefor, engraved coupon bonds or registered bonds without coupons of any denomination or denominations authorized pursuant to section 1 of this Article One for the same aggregate principal sum as the printed bonds surrendered; and until so exchanged each of such printed bonds shall be entitled to the same security as an engraved bond issued hereunder.

SEC. 7. Nothing in this indenture, or in the bonds issued hereunder, expressed or implied, is intended, or shall be construed, to give to any person or corporation other than the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy or claim under or in respect of this indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured.

## ARTICLE TWO.

SECTION 1. The Eastern Company hereby covenants with the Atchison Company, and the Eastern Company and the Atchison Company hereby severally and respectively covenant with the Trustee, to pay, or to cause to be paid, the principal and interest of every bond of the Atchison Company certified by the Trustee under this indenture, at the dates and the place, and in the manner mentioned in such bonds, or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States, or any state, territory, county or municipality therein, which the Atchison Company or the Eastern Company or the Trustee may be required to pay or to retain therefrom, under or by reason of any present or future law. The interest on the coupon bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and such coupons shall be canceled forthwith upon the payment thereof, whether such payment be made by the Atchison Company or by the Eastern Company. The interest on the registered bonds without coupons shall be payable only to the registered holders thereof.

Neither the execution of this indenture nor any agreement herein contained, nor any other agreement or legal relation between the Atchison Company and the Eastern Company shall in anywise impair, limit or affect the obligation and liability of the Atchison Company to the several holders of such bonds and coupons for the payment of the principal and interest thereof, as therein expressed; and the Atchison Company, at all times shall be and remain severally liable to the holders of such bonds and coupons for the payment of the entire principal and interest of such bonds and for the payment of the coupons for such interest according to the tenor and effect of such bonds and coupons.

At all times, until the payment of the principal of the bonds hereby secured, the Atchison Company and the Eastern Company each, severally, will maintain an agency in the City of New York, where such bonds and coupons may be presented for payment and where notices or demands in respect of said bonds and coupons may be served, and, from time to time, will give written notice to the Trustee of any change of any such agency. In case the Atchison Company or the Eastern Company should fail to maintain such agency or should fail to give such notice of any change thereof, presentation and demand may be made and notices may be served at the office of the Trustee in the City of New York.

SEC. 2. The Atchison Company at all times will maintain an agency in the City of New York for the registration and transfer of bonds issued hereunder. At such agency the Atchison Company will cause to be registered, subject to reasonable regulations, in books to be kept for that purpose, all registered bonds without coupons issued hereunder and any coupon bonds issued hereunder that shall be presented for registration; but coupon bonds shall be registered only as to the principal thereof. The Atchison Company at all times will permit the Trustee and the Eastern Company to inspect such books of registry.

Upon presentation at such agency of any such registered coupon bond, accompanied by delivery of a written instrument of transfer executed by the registered holder, such bond shall be transferred upon such bond register, and such transfer shall be noted by such registrar upon the bond. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond, when due, shall be payable to the person presenting the bond; but any such coupon bond registered as payable to bearer may be registered again in the name of the holder with the same effect as a first regis-

tration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired ; and each registration of a coupon bond shall be noted by the bond registrar on the bond.

Registration of any coupon bond, however, shall not restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery merely, and shall remain payable to bearer.

Any registered bond or bonds without coupons may be transferred upon such register upon surrender of such bond or bonds for cancellation, accompanied by delivery of a written instrument of transfer duly executed by the registered holder of the bond or bonds ; and thereupon a new registered bond, or new registered bonds, for an equivalent principal sum shall be issued to the transferee or transferees as provided in section 4 of Article One hereof.

SEC. 3. The Eastern Company covenants that whenever demanded by the Trustee it will execute and will deliver all such further deeds, conveyances and assurances in the law for the better assuring, conveying and confirming unto the Trustee all the property and franchises hereby conveyed or assigned, or intended so to be as the Trustee shall reasonably require for the better securing the payment of the principal and interest of said bonds.

SEC. 4. The Eastern Company and the Atchison Company severally and respectively covenant from time to time to pay or to cause to be paid all taxes, assessments and governmental charges lawfully imposed upon the property and franchises hereby mortgaged, or upon any part thereof, or upon the income and profits thereof, the lien whereof would be prior to that of this indenture, including all taxes, assessments and governmental charges lawfully imposed by the territory or state in which the mortgaged premises are located upon the lien or interest of the Trustee in respect of the

mortgaged premises, so that the lien and priority of this indenture upon the mortgaged premises shall be fully preserved at the cost of the Eastern Company, or of the Atchison Company, without expense to the Trustee or to the bondholders ; provided, however, that nothing in this section contained shall require the Eastern Company or the Atchison Company to pay or to cause to be paid any such taxes, assessments or governmental charges so long as in good faith the validity thereof shall be contested by legal proceedings.

SEC. 5. The Eastern Company covenants that it will not voluntarily create or suffer to be created any debt, lien or charge which would be prior in lien to the lien of these presents upon the mortgaged premises or any part thereof or upon the income thereof ; and within three months after the same shall accrue, it will pay or will cause to be discharged, or will make adequate provision to satisfy and discharge, all lawful claims and demands of mechanics, laborers and others, which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon the mortgaged premises or any part thereof or the income thereof ; provided that nothing in this section contained shall require the Eastern Company to pay any such debt, lien or charge so long as in good faith it shall contest the validity thereof by legal proceedings.

SEC. 6. The Eastern Company covenants that if any company of the capital stock whereof at least two-thirds shall be held by the Trustee hereunder shall fail to pay any taxes, assessments or governmental charges lawfully imposed upon its property, then the Eastern Company will cause such taxes, assessments or governmental charges to be paid, satisfied or discharged, or will make adequate provision for the payment, satisfaction or discharge thereof ; provided that nothing in this section contained shall require the Eastern Company to pay, satisfy or discharge, or provide for the payment, satisfaction or discharge of any such taxes, assessments or govern-

mental charges so long as such other company in good faith shall contest the validity thereof by legal proceedings.

SEC. 7. The Eastern Company covenants that if any company, of the capital stock whereof the greater part shall be held by the Trustee hereunder, shall issue any capital stock in addition to that then outstanding, or shall issue or guarantee any bonds or promissory obligation or certificate of indebtedness, except obligations and certificates issued in the current operation of its railway and property, then the Eastern Company, party of the first part hereto, will cause such additional stock, or such part thereof as shall be proportionate to the part of the entire capital stock previously held by the Trustee hereunder, and such bonds, obligations or certificates (except as aforesaid) to be assigned to the Trustee hereunder, and will cause the certificates for such stock and such bonds, obligations or certificates to be delivered to the Trustee, by it to be held subject to the trusts of this indenture; and all such additional stock shall be fully paid and non-assessable.

The Eastern Company covenants further that if any such other company shall make default in the payment of any other indebtedness by it incurred, then the Eastern Company, party of the first part hereto, promptly will acquire the same and will assign the same to the Trustee, or will cause the same to be paid, satisfied or discharged, or make adequate provision for the payment, satisfaction or discharge thereof; provided that nothing in this section contained shall require the Eastern Company to acquire any such indebtedness or to cause the same to be paid, satisfied or discharged, or to cause provision to be made for the payment, satisfaction or discharge thereof, so long as in good faith by legal proceedings the validity thereof shall be contested.

SEC. 8. The Eastern Company covenants that except as expressly authorized in this indenture, it will not do or suffer to be done any act whereby the proportionate part, held by

the Trustee hereunder, of the entire issued and outstanding capital stock of any company shall be diminished.

Except as herein otherwise expressly provided, the Eastern Company will not, by affirmative vote or by abstaining from voting, without the consent of the Trustee, sanction or permit any railroad company, of the capital stock whereof the greater part shall be subject to the lien of this indenture, to sell or otherwise to dispose of its railroad or to lease the same (unless such lease be terminable in case of a default hereunder and entry by the Trustee or upon sale of the stock of such company by the Trustee or pursuant to judicial proceedings), except to the Eastern Company or to some other company of the capital stock whereof not less than two-thirds shall then be subject to the lien of this indenture.

SEC. 9. Any and all indebtedness, liens and charges which the Eastern Company hereafter may acquire against any other company, of the capital stock whereof two-thirds shall have been pledged with or assigned to the Trustee hereunder, shall become and shall be (subject to the provisions in respect thereof in this indenture contained) subject to the lien of this indenture, and if and when requested in writing by the Trustee, the Eastern Company will execute to the Trustee appropriate assignments thereof.

SEC. 10. The authorized issue of the bonds hereby secured is limited to \$30,000,000 in the aggregate, and is further limited to \$25,000 per mile of main track railway (not including second or additional tracks, passing tracks and side tracks) that shall be owned by the Eastern Company and subject to this indenture, or by some other company, whereof all the mortgage bonds and two-thirds of the capital stock shall have been deposited with the trustee under this indenture. The Atchison Company will not issue, negotiate, sell or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained.

## ARTICLE THREE.

SECTION 1. The Trustee, in its discretion, at any time may cause to be registered in its name as trustee any and all coupon bonds that shall have been transferred and delivered to it hereunder, or it may cause any such bonds to be exchanged for fully registered bonds without coupons, or it may cause any such bonds to be stamped: "Not negotiable. Held by Morton Trust Company, as trustee, under the Indenture dated July 1, 1908, executed by The Atchison, Topeka and Santa Fe Railway Company, and The Eastern Railway Company of New Mexico, and by the Morton Trust Company as trustee."

The Trustee, in its discretion, at any time may transfer into its name as trustee all or any shares of stock the certificates for which shall have been delivered to the Trustee hereunder, or in lieu of transferring such shares into its own name, the Trustee may hold the certificates therefor duly endorsed for transfer, in the name of the Eastern Company, or its nominee.

Upon request of the Eastern Company, the Trustee, in its discretion, may do whatever it may deem necessary or suitable for the purpose of maintaining or preserving the corporate existence of any company that shall have issued any bonds or shares of stock then held by the Trustee hereunder, and, from time to time the Trustee may sell, assign and transfer so many shares of stock of any such company as may be necessary to qualify persons to act as directors thereof.

SEC. 2. Unless and until, after written notice thereof shall have been given by the Trustee to the Eastern Company, there shall be default (1) in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture and such default shall have continued for the period of three months; or (2) in the payment of the principal of any bond hereby secured; or (3) in the due observance or per-



formance of some other covenant or condition in this indenture required to be kept or performed by the Atchison Company or the Eastern Company, and such last-mentioned default shall have continued for the period of three months, the Eastern Company or its assigns shall have the right to vote upon all shares of stock now or at any time hereafter subject to this indenture for all purposes not inconsistent with the provisions or purposes of this indenture and with the same force and effect as though such stock had not been assigned to or pledged with the Trustee; and, from time to time, on demand of the Eastern Company, the Trustee forthwith shall execute and deliver to the Eastern Company, or its nominees, suitable powers of attorney or proxies to vote upon any shares of stock that shall have been transferred to the Trustee.

SEC. 3. The assignment or pledge hereunder of any shares of capital stock of any corporation shall not prevent the consolidation or merger of such corporation with or into the Eastern Company or any other company of which all the outstanding bonded debt and two-thirds of the outstanding capital stock shall be subject to this indenture, and shall not prevent the sale of all or any part of the property of such company to the Eastern Company or to any such other company; but anything in this indenture contained to the contrary notwithstanding, any such consolidation, merger or sale may be made when permitted by law. The Eastern Company may do all acts and things which it may deem necessary to effect any such consolidation, merger or sale, and upon demand of the Eastern Company and at its cost and expense, the Trustee shall execute all such powers of attorney, transfers, or other instruments in respect of such shares of capital stock as may be required for that purpose. In the event of any such consolidation or merger with or into the Eastern Company, or of any such sale to the Eastern Company, this indenture

immediately shall become and shall be a lien upon the property acquired by the Eastern Company through such merger, consolidation or sale, with the same force and effect as if expressly conveyed by this indenture, and upon request of the Eastern Company the Trustee shall surrender for cancellation and for no other purpose any bonds or certificates of stock then held by it which shall have been issued by the company so consolidated, or merged, or the property whereof shall have been sold to the Eastern Company.

SEC. 4. Unless and until, after written notice thereof shall have been given by the Trustee to the Eastern Company, there shall be a default (1) in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture and such default shall have continued for the period of three months ; or (2) in the payment of the principal of any bond hereby secured ; or (3) in the due observance or performance of some other covenant or condition in this indenture required to be kept or performed by the Atchison Company or the Eastern Company and such last-mentioned default shall have continued for the period of three months, (A) the Trustee (except with the assent of the Eastern Company) shall not collect or be entitled to collect the principal or interest of any mortgage bonds or of any other claims or indebtedness now or hereafter pledged with, or assigned to, the Trustee under this indenture, whether at, or before, or after, the maturity of such mortgage bonds, or other claims or indebtedness, and shall not enforce any provisions of the mortgages, trust deeds or other instruments under which such mortgage bonds, claims, or indebtedness were issued, or by which the same are secured ; (B) the Eastern Company shall be entitled to receive all interest paid in respect of any such mortgage bonds, claims or indebtedness, and the dividends on all shares of stock, which shall

have been transferred to or pledged with the Trustee pursuant to any provision of this indenture; (C) from time to time (subject to the covenants in respect thereof in this section contained), upon the request of the Eastern Company, the Trustee shall deliver to it the coupons for such interest, in order that the Eastern Company may receive payment thereof for its own use, or may cause the same to be canceled, and it shall deliver to the Eastern Company suitable orders in favor of the Eastern Company, or its nominee, for the payment of such interest and dividends, and the Eastern Company may collect such coupons, interest and dividends, but not by any proceeding which the Trustee shall deem to be prejudicial to the trusts hereunder, and the Trustee at once shall pay over to the Eastern Company any such interest and dividends which may be collected or received by it; and (D) the Eastern Company shall be entitled, for its own use, to demand, receive and collect, and it may release and discharge, the principal and interest of any claims or indebtedness (other than mortgage bonds which shall have been pledged hereunder), against any such other company, and upon request of the Eastern Company the Trustee shall execute any re-assignments or releases required for that purpose.

If any such coupon, or if any evidence of any such claim, or indebtedness, delivered to the Eastern Company hereunder shall not, as aforesaid, forthwith be paid, released or canceled, the Eastern Company shall return the same to the Trustee, and in case of the payment, release or satisfaction of any such coupon, claim or indebtedness, upon demand of the Trustee, it shall furnish satisfactory evidence of the cancellation of such coupon or of the evidence of such other indebtedness or claim. The Trustee, however, shall be under no duty to see to such cancellation or return.

Provided, however, and it is hereby declared and agreed that, except as herein otherwise expressly provided, (1) the Eastern Company shall not be entitled to receive, and the

Trustee shall not pay over to the Eastern Company, any principal of any bond pledged or assigned to the Trustee hereunder ; (2) the Eastern Company shall not be entitled to receive, and the Trustee shall not pay over, any principal or interest of any such bond, or any principal or interest of any such other claims or indebtedness that shall be collected or paid out of the proceeds of a sale of the property of the company liable upon such bonds, claims or indebtedness, in case of a foreclosure of the mortgage securing such bonds or the insolvency and liquidation of such company ; (3) the Eastern Company shall not sell, assign or transfer any such coupon, or right to interest or dividends, delivered or assigned to it, or any such other claim or indebtedness, except subject to this indenture ; (4) the Eastern Company shall not collect any such coupons or interest, or any such other claims, or indebtedness, by legal proceeding or by enforcement of any security therefor, except with the assent of the Trustee, nor in any manner which the Trustee shall deem prejudicial to the trust hereunder ; and (5) until actually paid, released or discharged, every such coupon, or right to interest or dividends, and such other claims and indebtedness, shall remain subject to the lien of this indenture.

SEC. 5. In case any sum shall be paid on account of the principal of any of the bonds which shall have been pledged or assigned to the Trustee hereunder, or in case any sum shall be paid on account of the interest thereon out of the proceeds of a sale of the property covered by a mortgage or trust deed securing such bonds or obligations, or in case, upon the insolvency and liquidation of any company, any sum shall be paid out of its assets upon any shares of stock of such company pledged hereunder, or upon any such claims or indebtedness subject to this indenture, then, in any such case, any such sum, unless applied on account of the purchase price of property purchased pursuant to this

Article, shall be received by the Trustee and, either, at the request of the Eastern Company and under its direction, shall be applied by the Trustee to the purchase of bonds hereby secured at not above 110 per cent. of their par value, which bonds so purchased thereupon shall be canceled, and shall not be reissued, or, at the option of Eastern Company, shall be paid over to it to reimburse it for expenditures by it made for any of the purposes for which bonds may be certified and delivered under section 3 of Article One hereof, provided that such expenditures shall not have been previously reimbursed, and shall be attested by certificates thereof signed by the President or a Vice-President, or the General Manager and by the Comptroller, or Treasurer or Assistant Treasurer of the Eastern Company.

SEC. 6. In case default shall be made in the payment of the principal or interest of any of the bonds at any time pledged or assigned hereunder, then, in any such case, upon the written request of the Eastern Company, the Trustee in its discretion, may cause proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose or enforce the mortgage, or trust, or lien, by which such bonds in default are secured.

In case the Eastern Company shall be in default in the payment of the principal or interest of any of the bonds hereby secured, and such default shall have continued for a period of ninety days, or in case a receiver of the mortgaged premises shall have been appointed, or in case the Trustee shall have entered, or shall have elected to enter, into possession of the mortgaged premises under the power hereinafter conferred, or by the voluntary action of the Eastern Company, then, without such written request, the Trustee, in its discretion, may institute such court proceedings.

In case, at any time, any company of whose capital stock two-thirds shall be held by the Trustee hereunder shall

be dissolved or be liquidated, or in case all or any of the railway of any such company shall be sold upon the insolvency of such company at any judicial or other sale, or in case any property covered by a mortgage securing any bonds held by the Trustee hereunder, shall be sold upon foreclosure of such mortgage, then in any such case, if by the Eastern Company requested in writing and provided with the cash necessary therefor, the Trustee shall purchase, or shall cause to be purchased, such property, or shall permit the Eastern Company to purchase the same, either in the name or on behalf of the Trustee or of the Eastern Company, or by purchasing trustees, and shall use, or shall permit the Eastern Company to use, such bonds, obligations, claims, indebtedness and stock, so far as may be, to make payment for such property ; but if the property of such company, or the property sold, can be acquired by crediting on the bonds, obligations, claims, indebtedness or stock held by the Trustee hereunder, any sum accruing or to be received thereon out of the proceeds of such property, and by paying not more than ten per cent. of the price of such property in cash, the Trustee in its discretion, without the request or consent of the Eastern Company, may purchase, or may cause to be purchased, such property, and may use, or permit to be used, as aforesaid, such bonds, obligations, claims, indebtedness and stock. In case of any such purchase the Trustee shall take such steps as it may deem proper to cause such property to be vested either in the Eastern Company (so far as it can acquire the same lawfully), subject to the lien of this indenture, or in some other corporation organized or to be organized for that purpose, all of whose bonded debt and at least two-thirds of whose capital stock shall be received and be held by the Trustee and shall be vested in the Eastern Company, or its assigns, subject to the lien of this indenture.

The Trustee also in any case may take such steps as in its discretion it shall deem advisable to protect its interests here-

under in respect of any bonds, obligations or stocks subject to the lien hereof, and for that purpose it may join in any plan of reorganization in respect of any such bonds or stocks and may accept new securities issued in exchange therefor under such plan.

The Eastern Company covenants that, on demand of the Trustee, it, the Eastern Company, forthwith will pay or satisfactorily will provide for all expenditures incurred by the Trustee under any of the provisions of this section, including all sums required to obtain and perfect the ownership and title to any property which the Trustee shall purchase or shall cause to be purchased pursuant to the provisions of this section; and in case the Eastern Company shall fail so to do, then, without impairment of, or prejudice to any of its rights hereunder by reason of the default of the Eastern Company, the Trustee, in its discretion, may advance all such expenses and other moneys required, or may procure such advances to be made by others, and for such advances made by the Trustee, or by others at its request, with interest thereon, the Trustee shall have a prior lien upon such property.

In case the Trustee shall not purchase or cause to be purchased the property sold at any such sale, and shall not join in a plan of reorganization as aforesaid in respect of such bonds or stocks, then the Trustee shall receive any portion of the proceeds of the sale accruing on the securities by it held hereunder, and such proceeds, from time to time, either at the request of the Eastern Company and under its direction shall be applied by the Trustee to the purchase of bonds hereby secured at not above 110 per cent. of their par value, which bonds so purchased shall be cancelled and shall not be reissued, or, at the option of the Eastern Company, shall be paid over to it to reimburse it for expenditures that shall have been made by it for any of the purposes for which bonds or their proceeds may be certified and delivered under section 3 of Article One hereof, upon certificates of such expenditures signed by the Presi-

dent, a Vice-President, or General Manager, and also by the Comptroller, or Treasurer or Assistant Treasurer of the Eastern Company.

SEC. 7. At any time in its discretion the Trustee may, and if requested in writing by the Eastern Company the Trustee shall, consent to the extension of any bonds or obligations held by the Trustee hereunder. In like manner in its discretion, the Trustee may, and if requested in writing by the Eastern Company, the Trustee shall surrender any such bonds or obligations to the company which issued them, or its successors or assigns, in exchange for new bonds or obligations bearing interest at such rate and maturing at such time as the Trustee may deem reasonable and secured by a mortgage upon the property covered by any mortgage securing the bonds or obligations surrendered ; but the mortgage securing such new bonds may cover additional property and it may authorize the issue of bonds in addition to those issued in exchange for the bonds or obligations surrendered by the Trustee. Such additional bonds, when issued, shall be deposited with the Trustee as provided in Section 7 of Article Two. The Trustee may receive the certificate of its counsel, or of counsel of the Eastern Company, as conclusive evidence that any such extension or exchange of bonds is in compliance with and is authorized by the provisions of this section. All bonds or obligations extended or received in exchange for bonds or obligations held by the Trustee shall, by the Trustee, be held subject to the lien and to all the terms and provisions of this indenture, in the same manner and to the same extent as the bonds or obligations in extension of which or in exchange for which they shall have been received.



## ARTICLE FOUR.

SECTION 1. In case any coupon or claim for interest on any of the bonds hereby secured should be funded or be extended by or with the consent of the Eastern Company or of the Atchison Company such coupon or claim for interest so funded or extended shall not be entitled, in case of default hereunder, to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all of said bonds that shall be outstanding and of all coupons and claims for interest thereon that shall not have been so funded or extended. If any coupons or claims for interest on any of said bonds at or after maturity shall be owned by the Eastern Company or by the Atchison Company, then such matured coupons or claims for interest shall not be entitled to the benefit or security of this indenture; and the Eastern Company and the Atchison Company severally covenant that all such coupons and claims for interest so owned by either of them at or after their maturity shall promptly be cancelled. In case the Atchison Company shall pay any of said bonds or any coupon or claim for interest on any of said bonds, then the Atchison Company shall not be entitled by reason of such payment to any rights, benefit or security under this indenture or in respect of the mortgaged premises, except subject to the prior payment in full of the principal and interest of all such bonds that shall remain unpaid.

SEC. 2. In case (1) default shall be made in the payment of any installment of interest on any bond secured by this indenture, and any such default shall continue for a period of three months; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Eastern

Company or by the Atchison Company, and any such last-mentioned default shall continue for a period of three months after written notice thereof shall have been given to the Eastern Company by the Trustee, or by the holders of ten per cent. in interest of the bonds hereby secured, then, and in each and every such case, the Trustee personally, or by its agents or attorneys, during the continuance of such default may enter upon the mortgaged premises, and may exclude the Eastern Company, its agents and servants, wholly therefrom ; and having and holding the same, either personally or by its receivers, agents, servants or attorneys, may use, operate, manage and control said premises, regulate the tolls for the transportation of passengers and freight thereon and conduct the business thereof to the best advantage of the holders of the bonds hereby secured ; and upon every such entry, at the expense of the trust estate, from time to time the Trustee may make all such necessary or proper repairs, renewals, replacements and useful alterations, additions, betterments, and improvements to said premises as to it may seem judicious, and may purchase or otherwise secure the use of additional engines, rolling stock, tools and machinery for use thereon, and either in the name of the Eastern Company or otherwise as the Trustee shall deem best, it may manage and operate the mortgaged premises and exercise all rights and powers of the Eastern Company in respect thereof, and it shall be entitled to collect and receive all tolls, earnings, income, rents, issues and profits thereof ; and the Trustee also shall be entitled to receive and collect the dividends on all stocks and the interest on all bonds pledged hereunder and to vote upon all such stocks ; and after deducting all expenses incurred hereunder and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon said premises or any part thereof, as well as just and reasonable compensation for the services of the Trustee and for all agents, clerks, servants and other employees by it properly engaged, the Trustee shall apply the moneys arising as aforesaid as follows :

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the rate of four per cent. per annum ; such payments to be made ratably to the persons entitled thereto, without discrimination or preference.

In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of four per cent. per annum) in the order of the maturity of the installments, and next to the payment of the principal of all bonds hereby secured ; in every instance such payments to be made ratably to the persons entitled to such payment without any discrimination or preference.

These provisions, however, are not intended in anywise to modify the provisions of section 1 of this Article, but are subject thereto.

SEC. 3. In case (1) default shall be made in the payment of any installment of interest on any bond at any time issued under and secured by this indenture, and any such default shall continue for a period of three months ; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured ; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Atchison Company or by the Eastern Company, and any such last-mentioned default shall continue for a period of six months after written notice thereof shall have been given to the Eastern Company by the Trustee, or by the holders of ten per cent. in interest of the bonds hereby secured, then and in each and every such case of default, during the continuance of such default, the Trustee, personally or by agent or attorney, with or without

entry, in its discretion (a) may sell to the highest and best bidder all and singular the mortgaged property and all right, title, interest, claim and demand therein and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of section 6 of this Article, in which case such sale shall be made in parcels as in said section provided; which sale shall be made at public auction at such place and at such time and upon such terms as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or (b) may proceed to protect and to enforce the rights of the Trustee and of the bondholders under this indenture by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel, may deem most effectual to protect and enforce any of its rights or duties hereunder.

SEC. 4. In case default shall be made in the payment of any installment of interest on any bond hereby secured, and any such default shall continue for a period of three months, then during the continuance of such default, upon the written request of the holders of a majority in interest of the bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Atchison Company and to the Eastern Company, shall declare the principal of all bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration, the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable and before any sale of the mortgaged

premises shall have been made, all arrears of interest upon all of said bonds, with interest at the rate of four per cent. per annum upon overdue installments of interest, shall either be paid by the Eastern Company or by the Atchison Company or be collected out of the mortgaged premises, then and in every such case the holders of a majority in interest of the bonds hereby secured then outstanding, by written notice to the Atchison Company and the Eastern Company and to the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Atchison Company, the Eastern Company and the Trustee shall be restored to their former position and rights hereunder in respect of the mortgaged premises; and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

SEC. 5. Upon the written request of the holders of twenty-five per cent. in interest of the bonds hereby secured, in case of any continuing default as specified in Section 3 of this Article, it shall be the duty of the Trustee, upon being indemnified, as hereinafter provided, to take all steps needful for the protection and enforcement of its rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustee, being advised by counsel, shall deem most expedient in the interest of the holders of the bonds hereby secured; but anything in this indenture to the contrary notwithstanding, the holders of sev-

enty-five per cent. in interest of the bonds hereby secured then outstanding, from time to time shall have the right to direct and control the action of the Trustee and the method and place of conducting any proceedings for any sale of the premises hereby mortgaged and pledged, or for the foreclosure of this indenture, or for the appointment of a receiver and any other proceedings hereunder.

SEC. 6. In the event of any sale, whether made under the power of sale hereby granted, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the property hereby mortgaged, including stocks, bonds and other property, shall be sold in one parcel and as an entirety, unless such sale as an entirety is impracticable by reason of some statute or other cause, or unless the holders of a majority in interest of the bonds hereby secured then outstanding shall, in writing, request the Trustee to cause said premises to be sold in parcels, in which case the sale shall be made in such parcels as shall be specified in such request or petition.

SEC. 7. Notice of any such sale pursuant to any provision of this indenture shall state the time when and the place where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four successive weeks prior to such sale in a newspaper published in New York, N. Y., and in a newspaper published in Roswell, New Mexico.

SEC. 8. From time to time the Trustee may adjourn any sale to be made by it under the provisions of this indenture, by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and without further notice or publication, the Trustee may make such sale at the time and place to which the same shall be so adjourned.

SEC. 9. Upon the completion of any sale or sales under this indenture, the Trustee shall execute and shall deliver to the accepted purchaser a good and sufficient deed or other instruments conveying, assigning and transferring the property and franchises sold. And the Trustee and its successors are hereby appointed the attorney irrevocable of the Eastern Company, in its name and stead, to make all necessary deeds and conveyances of the property sold, and may substitute one or more persons with like power, the Eastern Company hereby ratifying and confirming all that its said attorney shall lawfully do by virtue hereof.

Any such sale made under or by virtue of this indenture, whether under the power of sale hereby granted or under judicial proceedings, shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the Eastern Company and of the Atchison Company, in and to the premises sold, and shall be a perpetual bar, both at law and in equity, against the Eastern Company, its successors and assigns, and against any and all persons claiming or to claim the premises sold or any part thereof, from, through or under the Eastern Company or the Atchison Company, or their successors or assigns.

The personal property and chattels conveyed or intended to be conveyed by this indenture, shall be held and taken to be fixtures and appurtenances of the mortgaged railways, and are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

SEC. 10. The receipt of the Trustee shall be a sufficient discharge to any purchaser of the property or any part thereof sold as aforesaid, for the purchase money; and no such purchaser, or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any man-

ner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

SEC. 11. In case of any such sale, whether made under the power of sale hereby granted or pursuant to judicial proceedings, the whole of the principal sums of the bonds hereby secured, if not previously due, shall at once become due and payable, anything in said bonds, or in this indenture to the contrary notwithstanding.

SEC. 12. The purchase money, or proceeds or avails of any such sale, whether made under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee under any of the provisions of this indenture, as part of the trust estate, or the proceeds thereof, shall be applied as follows :

*First.* To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities or advances made or incurred by the Trustee in managing and maintaining the property hereby conveyed or so intended to be, and to the payment of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens to which such sales shall have been made subject.

*Second.* To the payment of the whole amount then owing or unpaid upon the bonds and coupons hereby secured for principal and interest, with interest at the rate of four per cent. per annum on the principal and the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then



ratably to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest, over any other installment of interest; subject, however, to the provisions of section 1 of this Article Four.

*Third.* To the payment of the surplus, if any, to the Eastern Company, its successors or assigns, or to those who may be lawfully entitled to receive the same.

SEC. 13. In case of any sale hereunder, any purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to turn in any bonds and any matured and unpaid coupons hereby secured, in order that there may be credited as paid thereon the sums payable out of the net proceeds of such sale to the holder of such bonds and coupons as his ratable share of such net proceeds, after allowing for the proportion of the total purchase price required to pay the costs and expenses of the sale, or otherwise, and such purchaser shall be credited on account of the purchase price of the property purchased, with the sums payable out of such net proceeds on the bonds and coupons so turned in; and at any such sale any bondholders may bid for and purchase such property, and may make payment therefor as aforesaid, and upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor.

SEC. 14. Neither the Eastern Company nor the Atchison Company at any time will insist upon or plead, or in any manner whatever will claim or take the benefit or advantage of, any stay or extension law, now or at any time hereafter in force in any locality where the mortgaged premises or pledged property, or any part of either, may or shall be situate; nor will it claim, take or insist on any benefit or advantage from any law now or hereafter in force providing for the valuation or ap-

praisement of the premises hereby mortgaged or conveyed, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree of any court of competent jurisdiction ; nor, after any such sale or sales, will it claim or exercise any right conferred by any statute enacted by any state or territory or otherwise to redeem the property so sold, or any part thereof ; and each of them hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

SEC. 15. Upon filing a bill in equity, or upon commencement of any other judicial proceedings to enforce any right of the Trustee or of the bondholders under this indenture, the Trustee shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of default, as hereinbefore provided ; and as matter of right, the Trustee shall be entitled to the appointment of a receiver of the premises hereby mortgaged, and of the earnings, income, revenue, rents, issues and profits thereof, with such powers as the court making such appointment shall confer, but notwithstanding the appointment of any receiver, the Trustee shall be entitled, as pledgee, to continue to retain possession and control of any stocks, bonds, cash and other property pledged or to be pledged with the Trustee hereunder.

SEC. 16. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, against the

Eastern Company, its successors or assigns, or the Atchison Company, its successors or assigns, unless the holders of twenty-five per cent. in interest of the bonds hereby secured, then outstanding, shall have requested the Trustee in writing to take action in respect of the matter complained of and shall have afforded to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; nor unless also they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action, for foreclosure or for the appointment of a receiver, or for any such other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

SEC. 17. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SEC. 18. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power

arising from any default continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein.

SEC. 19. No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness thereby, shall be had against any individual stockholder, officer or director of the Atchison Company or of the Eastern Company, or of any successor corporation, either directly or through either of said companies, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; and any and all personal liability of every such individual incorporator, stockholder, officer or director, whether arising at common law or in equity, or created by statute or constitution, is hereby expressly released and waived as a condition of, and as part of the consideration for, the execution of this indenture and the issue of said bonds and interest obligations.

SEC. 20. The Atchison Company and the Eastern Company jointly and severally covenant that (1) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for the period of three months, or (2) in case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether upon the maturity of said bonds, or upon a declaration as authorized by this indenture, or upon a sale as set forth in Section 11 of this Article Four—then, upon demand of the Trustee, the said Companies jointly and severally will pay to the Trustee, for the benefit of the holders of the bonds and coupons hereby secured, then outstanding, the whole amount that then shall have become due and payable on all such bonds and coupons then outstanding, for interest or principal, or both,

as the case may be, with interest at the rate of four per cent. per annum upon the overdue principal and installments of interest; and in case the said Companies shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment against them, jointly and severally, for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien thereof; and in case of a sale of the property subject to this indenture, and of the application of the proceeds of sale to the payment of the debt secured by this indenture, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no levy of any execution upon any such judgment upon property subject to this indenture, or upon any other property, shall in any manner or to any extent affect the lien of this indenture upon the property or any part of the property subject to this indenture, or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies of the Trustee and of the bondholders shall continue unimpaired as before.

Any moneys thus collected by the Trustee under this section shall be applied by the Trustee towards payment of

the amounts then due and unpaid upon such bonds and coupons in respect of which such moneys shall have been collected, ratably and without any preference or priority of any kind (except as provided in Section 1 of this Article Four), according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

SEC. 21. At any time hereafter before full payment of the bonds secured hereby, and whenever it shall deem expedient for the better protection or security of such bonds (although then there shall be no default entitling the Trustee to exercise the rights and powers conferred by section 2 and section 3 of this Article Four), the Eastern Company, with the consent of the Trustee, may surrender and may deliver to the Trustee full possession of the whole or of any part of the property, premises and interests hereby conveyed or assigned, or intended so to be, and may authorize the Trustee to collect the dividends and interest on all shares of stock, bonds and other obligations subject to this indenture, and to vote upon all such shares of stock, for any period fixed or indefinite. In such event the Trustee shall enter into and upon the premises and property so surrendered and delivered, and shall take and receive possession thereof, for such period, fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon maintaining and to maintain such possession though beyond the expiration of any such prescribed period, and the Trustee, from the time of its entry upon such premises and property, shall work, maintain, use, manage, control and employ the same in accordance with the provisions of this indenture, and

shall receive and apply the income and revenues thereof as provided in section 2 of this Article Four. Upon application of the Trustee, and with consent of the Eastern Company, if then there be no subsisting default such as is specified in said section 2 of this Article Four, and without such consent if then there shall be such a subsisting default, a receiver may be appointed to take possession of, and to operate, maintain and manage the whole or any part of the property subject to this indenture, and the Eastern Company shall transfer and deliver to such receiver all such property, wheresoever the same may be situated ; and in every case, when a receiver of the whole or of any part of said property shall be appointed under this section, or otherwise, the net income and profits of such property shall be paid over to, and shall be received by, the Trustee, for the benefit of the holders of the bonds hereby secured ; *provided, however*, that notwithstanding the appointment of any such receiver, the Trustee, as pledgee, shall be entitled to retain possession and control of any stocks, bonds, cash and other property pledged or to be pledged with the Trustee hereunder.

## ARTICLE FIVE.

SECTION 1. Any request or other instrument, required by this indenture to be signed and executed by bondholders, may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture and may be received by the Trustee as conclusive, if made in the following manner :

The fact and date of the execution by any person of any such request, or other instrument, or writing, may be proved

by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

The aggregate amount of coupon bonds transferable by delivery, held by any person executing any such request or other instrument as a bondholder, and the distinctive numbers of such bonds, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depository (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing therein that at the date therein mentioned such person had on deposit with such depository the bonds described in such certificate. The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such bonds.

SEC. 2. The Atchison Company, the Eastern Company and the Trustee may deem and treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof and for all other purposes; and neither the Atchison Company nor the Eastern Company nor the Trustee shall be affected by any notice to the contrary.

The Atchison Company and the Eastern Company and the Trustee may deem and treat the person in whose name any registered bond without coupons issued hereunder shall be registered upon the books of the Atchison Company, as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of, or on account of the principal and interest of such bond, and for all other purposes, and



may deem and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof for the purpose of receiving payment of, or on account of the principal thereof, and for all other purposes except to receive payment of interest represented by outstanding coupons ; and all such payments so made to any such registered holder for the time being, or upon his order, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

#### ARTICLE SIX.

Upon the written request of the President or of a Vice-President of the Eastern Company, approved of or authorized by resolution of its board of directors, or Executive Committee, the Trustee, from time to time, subject to the conditions and limitations in this Article prescribed, and not otherwise, shall release from the lien and operation of this indenture any part of the rights of way, lands and other property (except stocks, bonds and indebtedness of other companies) then subject to this indenture that at the time of such release shall not be necessary or advantageous for the operation, maintenance or use of any of the lines of railway then subject to the lien of this indenture or for use in connection with the business of the Eastern Company ; *provided*, however, (1) that no part of the tracks of such railway or of the rights of way shall be so released if thereby the continuity of the lines of railway of the Eastern Company would be broken and (2) that no part of the mortgaged railways or other property shall be released hereunder unless such release is required for the purpose of carrying out some agreement for the sale of the property to be released or for the exchange thereof for other property.

The proceeds of any and all such sales, and all moneys received as compensation for any property subject to this indenture taken by exercise of the power of eminent domain shall be

set apart and be applied to the purchase of other property, or in betterments of or improvements upon any part of the mortgaged premises. Any new property acquired by the Eastern Company in exchange for or to take the place of any property released hereunder, *ipso facto*, shall become and shall be subject to the lien of this indenture, as fully as if specifically mortgaged hereby, but, if requested by the Trustee, the Eastern Company will convey the same to it by appropriate deeds upon the trusts and for the purposes of this indenture.

The Eastern Company, from time to time, while in possession of the mortgaged premises, also shall have full power, in its discretion, to dispose of any portion of the fixtures, machinery, implements or other chattels, at any time held subject to the lien hereof, which may have become unfit for such use, replacing the same by new fixtures, machinery or other property, which shall become subject to the lien of this indenture.

In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this Article be required to see to the application of the purchase money.

The Eastern Company from time to time may release or make changes or alterations in, or substitutions of, any leases, trackage rights or contracts that are subject to this indenture, and in any such event any modified, altered or substituted leases, contracts or trackage rights forthwith shall become bound by and be subject to the terms of this indenture, in the same manner as those previously existing; but nothing herein contained shall be construed as giving to the Eastern Company power to make any lease of, or to grant trackage rights upon, the mortgaged premises or to enter in any contract affecting the same, except subject to the prior lien of this indenture. In case any of the property subject to this indenture shall be in the possession of a receiver lawfully appointed, the powers in and by this Article conferred upon the Eastern Company

may be exercised by such receiver with the approval of the Trustee, and if the Trustee shall be in possession of any such property under any provision of this indenture, then all the powers in this Article conferred upon the Eastern Company may be exercised by the Trustee in its discretion.

A certificate signed by the President, or Vice-President, or General Manager or the Chief Engineer of the Eastern Company, may be received by the Trustee as conclusive evidence of any of the facts mentioned in this Article, and shall be full warrant to the Trustee for its action on the faith thereof, and the Trustee shall not be under any duty to see to the application of the proceeds of any such sale.

#### ARTICLE SEVEN.

Upon previous advertisement of notice, as hereinafter provided, the Eastern Company shall have the right on the first day of any January or July, to redeem and pay off the bonds hereby secured, at 110 per cent. of their par value and the interest accrued to the date of redemption specified in such notice.

In case the Eastern Company shall desire to exercise such right to redeem and pay off the bonds hereby secured on any first day of January or July, it shall advertise at least once in each of the three calendar months next preceding such first day of January or July a notice that the Eastern Company has elected to redeem and pay off the bonds secured by this indenture on such first day of January or July, and that on such first day of January or July there will become and be due and payable upon each of such bonds, at the agency of the Eastern Company in the City of New York, the principal thereof, with a premium of ten per cent. of such principal and the accrued interest to such first day of January or July. Upon advertisement of such notice by the Eastern Company, the bonds hereby secured shall become and be due and payable

on the first day of January or July specified in such notice, at one hundred and ten per cent. of their par value and the interest accrued from the last matured interest installment.

The sum so due for principal and premium of each coupon bond shall be payable to the bearer of such coupon bond unless it shall have been registered, and if it shall have been registered, then such payment shall be made to the registered holder of such registered coupon bond, but in no case shall the Eastern Company be required to make payment except upon surrender of such bond and of all coupons for interest thereon not due at the date of redemption designated in such notice. All coupons for interest which shall have matured on or prior to the date of redemption designated in such notice shall continue to be payable, but without interest thereon, to the respective bearers of such coupons. The sum so payable upon registered bonds without coupons for principal and premium and for such accrued interest from the maturity of the last interest installment prior to the date of redemption designated in such notice, shall be paid to the holders of such bonds or their assigns, under duly executed instruments of assignment, but in each case only upon surrender of the bonds.

From and after the date of redemption designated in such notice so advertised (unless the Eastern Company shall make default in payment upon demand as herein provided) no further interest shall accrue upon any of such bonds; and anything in such bonds or in such coupons or in this indenture to the contrary notwithstanding, any coupon for interest maturing after such date shall become and be null and void.

## ARTICLE EIGHT.

SECTION 1. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care ; nor for the exercise of any discretion or power hereunder, nor for anything whatever, in connection with this trust, except willful misconduct or gross negligence ; nor shall the Trustee be accountable for the use of any bonds certified or delivered by the Trustee hereunder. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created, which, in its opinion, shall be likely to involve it in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish it reasonable indemnity against such expense or liability ; nor shall the Trustee be required to take notice of or any action in respect of any default unless requested to take such notice or action in respect thereof by a writing signed by the holders of not less than twenty-five per cent. in interest of the bonds hereby secured then outstanding, and tendered reasonable indemnity as aforesaid, anything herein contained to the contrary notwithstanding ; but the foregoing provisions of this section are intended only for the protection of the Trustee and shall not affect any discretion or power by any provision of this indenture given to the Trustee to determine whether or not it shall take action in respect of any default, without such notice or request from bondholders.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and the Eastern Company agrees to pay such compensation, as well as all expenses necessarily incurred or disbursed by the Trustee hereunder, and the Trustee shall

have a lien therefor on the property hereby mortgaged or conveyed.

The Trustee shall incur no liability to anybody in acting upon any notice, request, consent, certificate, note, bond, document or paper believed by it to be genuine and to have been signed by the proper person.

The Trustee may, when reasonably necessary, advise with legal counsel to be selected and employed by it and the reasonable expenses therefor shall be paid by the Eastern Company, and the Trustee shall not be liable for anything done or suffered in good faith by it in accordance with the opinion of counsel.

The recitals and statements herein and in said bonds and coupons contained shall be taken as statements by the Railway Companies and shall not be considered as made by or as imposing any obligation or liability upon the Trustee, nor shall the Trustee be held responsible for the legality or validity hereof or of said bonds or coupons or of any supplemental mortgage or instrument of further assurance.

In executing this indenture the Trustee makes no covenant or representation respecting the rights of the holders of any of the bonds issued hereunder or the title or interest of the Eastern Company in or to the property described herein or respecting the validity of any assignment under which the securities held hereunder were acquired by the Eastern Company or assigned to the Trustee (including the securities described in paragraphs 5 and 6 of the granting clause hereof), or the sufficiency of the security afforded by the property embraced herein.

The Trustee shall not be responsible for the recording, registration, filing or refiling of this instrument or of any instrument of further assurance or of any deed or mortgage which it may hereafter receive as hereinabove provided, as a mortgage of real estate or as a chattel mortgage, or for the renewing of the lien hereof or thereof or for the affixing or cancella-

tion of any revenue stamps, nor shall the Trustee be under any duty to give notice to anybody of this or of any such other mortgage, and the Trustee may authenticate and deliver the bonds in accordance with the provisions hereof notwithstanding that this indenture shall not have been recorded or filed.

It is expressly understood that the Trustee shall be under no duty or liability in respect to any tax which may be assessed against either of the Railway Companies or the Trustee or against the owners of the bonds hereby secured in respect to their interest in the property mortgaged hereunder or under any future mortgage which may be executed to the Trustee under the provisions of this indenture, or against the property mortgaged hereunder or under any such future mortgage, nor shall the Trustee be under any duty to pay or see to the payment of such tax, or take any notice of the assessment therefor or give any notice thereof to the holders of the bonds secured hereby or any other person ; nor shall the Trustee be under any duty to accept any mortgage to be given under any of the provisions of this indenture or to do any act which shall necessitate the acceptance by it of such mortgage if the acceptance thereof shall impose any liability upon it to pay or see to the payment of any such tax ; and for any expense or liability which the Trustee may incur by reason of or growing out of any such tax the Eastern Company shall reimburse the Trustee and the Trustee shall have a lien therefor on the property hereby pledged prior to the lien of the bonds hereby secured.

It shall be no part of the duty of the Trustee to see to the insurance of any part of the property hereby mortgaged, or of any property on which the Trustee may hereafter acquire a lien as above provided, or itself to effect such insurance.

The trust estate, property and funds shall be primarily liable to third persons for all debts contracted by the Trustee and for all damages to persons or property injured and for salaries and for non-performance of contract, and for all other

torts, obligations and liabilities arising during any period wherein the Trustee shall manage the trust property or any of it, upon entry or voluntary surrender as aforesaid or otherwise; and the Trustee shall not be personally liable in respect of any such matters.

The duties of the Trustee to the Railway Companies and to the holders of bonds and coupons secured hereby shall be determined solely by the provisions of this instrument and by the laws of the State of New York.

Any action taken by the Trustee pursuant to this indenture upon the request of any person who at the time is the owner of any bond secured hereby shall be conclusive and binding upon all future owners of the same bond.

Any money received by the Trustee under any provision of this indenture may be treated by it until it is required to pay out the same conformably herewith, as a deposit, without any liability for interest save such as during that time it allows to its general depositors.

The Trustee may become the owner of bonds and coupons secured hereby with the same rights which it would have if it were not Trustee.

Whenever in this indenture the existence of any situation, matter, conclusion of fact of any character, or the sufficiency or validity of any instrument, paper or proceeding, or of any proof or evidence of any fact shall be prescribed as a condition of or in any manner with respect to any action or proceeding on the part of the Trustee, or shall be deemed necessary or convenient to be ascertained by the Trustee, a certificate signed by the President or a Vice-President or General Manager, and also by the Comptroller, Treasurer or Assistant Treasurer of the Eastern Company, shall, in the discretion of the Trustee, be sufficient evidence of any such fact, situation, matter or conclusion, and shall be complete protection to the Trustee for any act done or suffered on its part upon the faith thereof except where other evidence is hereinabove specifically



prescribed, but the Trustee may, in its reasonable discretion, require other evidence.

SEC. 2. The Trustee, or any trustee hereafter appointed, may resign and be discharged of the trusts created by this indenture by giving notice thereof to the Eastern Company and to the bondholders, by publication, at least twice a week, for four successive weeks, in one newspaper at that time published in New York, N. Y., and in one newspaper published in Roswell, N. M.

The Trustee may be removed at any time by an instrument in writing under the hands of three-quarters in interest of the holders of the bonds hereby secured then outstanding.

SEC. 3. In case at any time the Trust Company or any trustee hereafter appointed, shall resign or be removed or otherwise become incapable of acting, a successor, or successors, may be appointed by the holders of a majority in interest of the bonds hereby secured then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized ; provided, nevertheless, and it is hereby agreed and declared that, in case at any time there shall be a vacancy in the office of trustee hereunder, the Eastern Company, by an instrument executed by order of its board of directors, may appoint a trustee to fill such vacancy until a successor trustee shall be appointed by the bondholders as herein authorized. After any such appointment by the Eastern Company it shall publish notice of such appointment once a week for six successive weeks in a newspaper published in New York, N. Y., and in a newspaper published in Roswell, N. M., and any new trustee so appointed by the Eastern Company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in interest of the

bonds hereby secured if such appointment by such bondholders be made prior to the expiration of one year after such publication of notice. Every such successor trustee shall be a trust company in the City of New York in good standing and having a capital and surplus aggregating at least \$1,000,000, if there be such a trust company qualified, able and willing to accept the trust upon reasonable or customary terms.

Any such new trustee appointed hereunder shall execute, acknowledge and deliver to the trustee last in office and also to the Eastern Company and the Atchison Company, an instrument accepting such appointment hereunder, and thereupon such new trustee, without any further act, deed or conveyance shall become vested with all the estates, properties, rights, powers and trusts of its or his predecessor in the trust hereunder with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the successor trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so resigning or removed, and shall duly assign, transfer and deliver any other property and moneys held by such trustee to the successor trustee so appointed in its place.

Should any deed, conveyance or instrument in writing from the Eastern Company be required by any successor trustee for more fully and certainly vesting in and confirming to such new trustee such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, be made, executed, acknowledged and delivered by the Eastern Company.

SEC. 4. For the purposes of section 2 and section 3 of this Article, the fact of the holding of bonds by any bondholder, and the amount and issue numbers of such bonds and the date

of his holding the same, may be evidence either in the manner specified in Article Five of this indenture or, at the option of any bondholder, by affidavit of the bondholder in the case of coupon bonds transferable by delivery, and by a certificate of the bond registrar in the case of registered coupon bonds and registered bonds without coupons.

SEC. 5. If at any time or times, in order to conform to any law of any locality in which the Eastern Company may hold property, the Eastern Company shall so request, the Eastern Company and the Trustee shall unite in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint another trust company or one or more persons approved by the Trustee, to act either as co-trustee or as co-trustees, for any purpose of this indenture, of all or any of the property subject to this indenture jointly with the Trustee originally named herein or its successors, or to act as separate trustee or trustees of any of such property.

## ARTICLE NINE.

SECTION 1. Until and unless there shall be some default in the due and punctual payment of the interest, or of the principal of the bonds hereby secured, or of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Eastern Company or upon the Atchison Company, and until such default shall have continued beyond the period of grace, if any, provided in respect thereof, the Eastern Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the premises hereby mortgaged, except bonds and stocks of other railway companies pledged with the Trustee hereunder, and to manage, operate and use the same and

every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the rents, earnings, income, issues and profits thereof.

SEC. 2. If, when the bonds hereby secured shall have become due and payable, the Eastern Company shall well and truly pay or cause to be paid the whole amount of the principal moneys and interest due and payable upon all of the said bonds and the coupons for interest thereon, or shall provide for such payment by depositing with the Trustee hereunder for the payment of such bonds and coupons the amount due and payable thereon for principal and interest and shall also pay or cause to be paid all other sums payable hereunder by the Atchison Company or the Eastern Company, and shall well and truly keep and perform all things herein required to be kept and performed by them according to the true intent and meaning of this indenture, then and in that case all property, rights and interests hereby conveyed or pledged shall revert to the Eastern Company, its successor or assigns, and the estate, right, title and interest of the Trustee shall thereupon cease, determine and become void; and the Trustee in such case, on demand of the Eastern Company, its successors or assigns, and at its or their cost and expense, shall enter satisfaction of this indenture upon the records; otherwise, the same shall be, continue and remain in full force and virtue.

If the Atchison Company shall pay the principal of any of said bonds, or any interest on any of said bonds, or any other sum herein required to be paid by the Eastern Company or the Atchison Company, the lien and charge of the Atchison Company upon said railways and property for the repayment of the sums so paid shall be in all respects subject and subordinate to the prior payment in full of the principal and interest of all of said bonds that shall not have been paid by the Atchison Company.

## ARTICLE TEN.

Morton Trust Company, party of the third part, hereby accepts the trust in this indenture declared and provided and agrees to perform the same upon the terms and conditions herein set forth.

## ARTICLE ELEVEN.

SECTION 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Atchison Company or the Eastern Company, shall bind its successors and assigns, whether so expressed or not.

SEC. 2. Nothing contained in this indenture or in any bond hereby secured shall prevent any consolidation or merger of either of the Railway Companies with any other corporation, or any conveyance and transfer (subject to the continuing lien of this indenture, and to all the provisions thereof), of all the property subject to this indenture as an entirety to a railroad corporation at that time existing under and by virtue of the laws of any State or States, or of the United States, and empowered to acquire the same; *provided, however*, that such consolidation, merger or sale shall not impair the lien and security of this indenture, or any of the rights or powers of the Trustee, or of the bondholders hereunder, and that upon such consolidation, merger or sale, the due and punctual payment of the principal and interest of all of the bonds hereby secured, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed by the corporations formed by such consolidation or merger, or purchasing as aforesaid.

SEC. 3. In case, pursuant to Section 2 of this Article, the

Eastern Company shall be consolidated or be merged with any other corporation, or shall sell, convey and transfer (subject to this indenture), all the property conveyed by this indenture, as an entirety as aforesaid, the successor corporation formed by such consolidation, or into which the Eastern Company shall have been merged, or which shall have purchased and received a conveyance and transfer, as aforesaid—upon executing and causing to be recorded an instrument satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of the bonds hereby secured, and the performance of all the covenants and conditions of this indenture—shall succeed to, and be substituted for, the Eastern Company, party of the second part hereto, with the same effect as if it had been named herein as such party of the second part; and, upon the order of such successor corporation, in lieu of the Eastern Company, and subject to all the terms, conditions and restrictions herein prescribed, the Trustee shall certify and shall deliver any of such bonds which previously shall have been signed and delivered by the officers of the Atchison Company or its successor to the Trustee for certification, and any of such bonds which thereafter shall be signed and delivered to the Trustee for that purpose. In case the Atchison Company shall be consolidated or merged with any other corporation, the successor corporation, upon executing an instrument satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of the bonds hereby secured, and the performance of all the covenants and conditions of this indenture binding upon the Atchison Company, shall succeed to and be substituted for, the Atchison Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the second part, and such successor corporation thereupon may cause to be signed and issued, in the name of the Atchison Company, any and all such bonds which theretofore shall not have been signed by the Atchison Company and delivered to

the Trustee. All the bonds so issued shall, in all respects, have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture, as though all of said bonds had been issued at the date of the execution hereof. The Trustee shall be under no duty to see that any such successor to the Eastern Company or the Atchison Company shall execute any such instrument, except as a condition precedent to the vesting in such successor of the rights and powers conferred by this section.

SEC. 4. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the terms "Atchison Company" and "Atchison, Topeka and Santa Fe Railway Company" and the terms "Eastern Company" and "Eastern Railway Company of New Mexico," respectively, include and mean not only the party of the first part and the party of the second part hereto, but also any such successor corporation formed by consolidation or otherwise under the laws of any State or States or of the United States. Every such successor or purchasing corporation shall possess, and from time to time may exercise, each and every right and power hereunder of the said corporations respectively in the name of such corporation or otherwise.

SEC. 5. Any act or proceeding, by any provision of this indenture authorized or required to be done or performed by any board or officer of the Atchison Company, or of the Eastern Company shall and may be done and performed with like force and effect by the like board or officer of any railroad corporation that shall at the time be such lawful sole successor or purchaser of either of such Companies respectively.

SEC. 6. Nevertheless, before the exercise of the powers conferred by this Article, the Eastern Company or the Atchison Company, by instrument in writing executed by authority of two-thirds of its board of directors and delivered to the

Trustee, may surrender any of the powers reserved to it, or to its successors as aforesaid ; and thereupon such power so surrendered shall terminate.

IN WITNESS WHEREOF, on the day and year first above written, The Atchison, Topeka and Santa Fe Railway Company, party hereto of the first part, The Eastern Railway Company of New Mexico, party hereto of the second part, and the Morton Trust Company, party hereto of the third part, each has caused its corporate seal to be hereunto affixed and to be attested by its Secretary or Assistant Secretary, and these presents to be signed, and acknowledged or proved by its President or by one of its Vice-Presidents. Executed in five uniform originals.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,

by

[Corporate Seal.]

EDWARD P. RIPLEY,  
President.

Attest :

L. C. DEMING,  
Ass't.-Secretary.

THE EASTERN RAILWAY COMPANY OF NEW MEXICO,

by

[Corporate Seal.]

WILLIAM B. JANSEN,  
First Vice-President.

Attest :

L. C. DEMING,  
Ass't.-Secretary.

MORTON TRUST COMPANY,

by

[Corporate Seal.]

CHARLES H. ALLEN,  
Vice-President.

Attest :

H. M. FRANCIS,  
Secretary.



STATE OF NEW YORK, }  
 County of New York, } ss. :

Be it remembered that on this 5th day of September, A. D. 1908, before me, JARVIS P. CARTER, a Notary Public of the State of New York, in and for the County of New York aforesaid, duly commissioned and sworn, personally appeared in the State and County aforesaid Edward P. Ripley, to me personally known and known to me to be the President of The Atchison, Topeka and Santa Fe Railway Company, the corporation named in and which executed the foregoing instrument, and the said Edward P. Ripley being then and there by me duly sworn, did depose and say that he resided in the County of Cook, State of Illinois; that he was and is the President of The Atchison, Topeka and Santa Fe Railway Company, the corporation described in and which executed the foregoing instrument; that he knew the corporate seal of said corporation; that the seal affixed to the said instrument was and is the corporate seal of said corporation and was affixed by order of the Board of Directors of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said Edward P. Ripley then and there acknowledged said instrument to be the free act and deed of said corporation, and that the said corporation executed the same for the purposes and consideration therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

JARVIS P. CARTER,

[Notarial Seal.]

Notary Public for the County of New  
 York, State of New York.

My commission expires March 30, 1909.

STATE OF ILLINOIS, }  
 County of Cook, } ss. :

Be it remembered that on this 8th day of September, A. D. 1908, before me, NELSON W. WILLARD, a Notary Public of the State of Illinois, in and for the County of Cook aforesaid, duly commissioned and sworn, personally appeared in the State and County aforesaid, William B. Jansen, to me personally known and known to me to be the First Vice-President of The Eastern Railway Company of New Mexico, the corporation named in and which executed the foregoing instrument, and the said William B. Jansen, being then and there by me duly sworn, did depose and say that he resided in the County of Cook, State of Illinois; that he was and is the First Vice-President of The Eastern Railway Company of New Mexico, the corporation described in and which executed the foregoing instrument; that he knew the corporate seal of said corporation; that the seal affixed to the said instrument was and is the corporate seal of said corporation and was affixed by order of the Board of Directors of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said William B. Jansen then and there acknowledged said instrument to be the free act and deed of said corporation, and that the said corporation executed the same for the purposes and consideration therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

NELSON W. WILLARD,

[Notarial Seal.]      Notary Public for the County of Cook,  
 State of Illinois.

My commission expires October 9th, 1910.

STATE OF NEW YORK, }  
 County of New York, } ss. :

Be it remembered that on this 12th day of September, A. D. 1908, before me, E. J. BLEEZARDE, a Notary Public of the State of New York, in and for the County of New York aforesaid, duly commissioned and sworn, personally appeared in the State and County of New York aforesaid, Charles H. Allen, to me personally known and known to me to be the Vice-President of Morton Trust Company, the corporation named in and which executed the foregoing instrument, and the said Charles H. Allen being then and there by me duly sworn did depose and say that he resides in the State of Massachusetts, County of Middlesex; that he was and is the Vice-President of Morton Trust Company, the corporation described in and which executed the foregoing instrument; that he knew the corporate seal of said corporation; that the seal affixed to the said instrument was and is the corporate seal of said corporation and was affixed by order of the Board of Directors of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said Charles H. Allen then and there acknowledged said instrument to be the free act and deed of said corporation and that the said corporation executed the same for the purposes and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

E. J. BLEEZARDE,

[Notarial Seal.] Notary Public, Richmond County,  
 Certificate filed in New York County.

My commission expires March 30th, 1909.

TERRITORY OF NEW MEXICO, }  
 Socorro County, } ss. :

This instrument of writing was filed for record on the 25th day of Sept., A. D. 1908, at 2 o'clock P. M., and duly recorded in Vol. 67 of Mortgages on pages 31 to 67, inclusive.

E. H. SWEET,  
 Probate Clerk and Recorder.

(Seal—Probate Court  
 Socorro County,  
 New Mexico.) by  
 J. A. TONES.

TERRITORY OF NEW MEXICO, }  
 County of Chaves, } ss. :

Filed for record the 25 day of Sept., A. D. 1908, at 11 o'clock A. M., and recorded in Book Y, page 1 *et seq.*

F. P. GAYLE,  
 Probate Clerk and *ex officio* Recorder.

(Seal—Probate Court,  
 Chaves County,  
 New Mexico.)

TERRITORY OF NEW MEXICO, }  
 County of Roosevelt, } ss. :

Filed for Record the 25 day of Sept., A. D. 1908, at 8 o'clock A. M. and Recorded in Book Chat. Mtg. F, page 464.

B. T. BIRDWELL,  
 Probate Clerk and *ex-officio* Recorder.

(Seal—The Probate Court,  
 Roosevelt County.)

TERRITORY OF NEW MEXICO, }  
County of Eddy. } ss. :

Filed for record on the 25 day of Sept., A. D. 1908, at 8 o'clock A. M. and was duly recorded in Book 8 of Records of Mtg., pages 178 to 231, inclusive.

W. R. OWEN,  
Probate Clerk and Recorder.

(Seal—Probate Court,  
Eddy County,  
New Mexico.)

TERRITORY OF NEW MEXICO, }  
County of Valencia, } ss. :

This instrument was filed for record on the 26th day of Sept., 1908, at 9:35 o'clock A. M. Recorded in Vol. " M " 4 of Records of said County, folio 78 to 135 inc.

**J. M. LIMA,**  
**Recorder.**

(Seal—Probate Court,  
Valencia County,  
New Mexico.)

TERRITORY OF NEW MEXICO, }  
County of Guadalupe, } ss. :

This instrument of writing was filed for record on the 17th day of Oct., A. D. 1908, at 8 o'clock A. M., and duly recorded in Vol. No. 3 of Mortgage Deeds, pages 312 to 392 inclusive.

GEORGE SENA,  
Probate Clerk and *ex officio* Recorder.

(Seal—Probate Court,  
County of Guadalupe,  
New Mexico.)

TERRITORY OF NEW MEXICO, }  
 County of Torrance, } ss. :

I hereby certify that this instrument was filed for record on the 23d day of Oct., A. D. 1908, at 9 o'clock, A. M., and was duly recorded in book 2 of the Records of Deeds, page 256 to 277, on this 23 day of Oct., A. D. 1908.

Witness my hand and seal of office.

CANDIDO PADILLO,

P. C. and Recorder, Torrance Co., N. M.

F. A. CHAVEZ,

(Seal—Probate Court, Torrance  
 County, New Mexico.)

Deputy.











